At the centre or the margins

Sosa, L.P.A.

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At the centre or the margins? A review of intersectionality in the human rights framework on violence against women

PROEFSCHRIFT

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door Lorena Paula Angelina Sosa,
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Acronyms

ACHR American Convention on Human Rights. 1, 194, 384

BDPoA Beijing Declaration and Platform of Action. 1, 150, 177

Belem do Para Convention Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women. 1, 31, 194, 197, 309, 385

CEDAW Convention on the Elimination of All Forms of Discrimination against Women. 1, 31, 92, 177, 240, 309

CEDAW Cee UN Committee on the Elimination of Discrimination Against Women. 1, 32, 92

CEDAW-OP Optional Protocol to the CEDAW Convention. 1, 31, 93

CERD International Convention on the Elimination of All Forms of Racial Discrimination. 1

CoE Council of Europe. 1, 11, 168, 228, 240, 309, 383

DARSIWA Draft Articles on Responsibility of States for Internationally Wrongful Acts. 1, 46

DEDAW United Nations Declaration for the Elimination of Discrimination Against Women. 1

DEVAW Declaration on the Elimination of Violence against Women. 1, 37, 131, 177, 197, 381

EBO Emergency Barring Orders. 1, 117

ECHR European Convention on Human Rights and Fundamental Freedoms. 1, 168, 384

ECtHR European Court of Human Rights. 1, 12, 40, 168, 239, 384, 392

EU European Union. 1, 16

FGM Female Genital Mutilation. 1, 179, 224

GR General Recommendation. 1, 383

GRs General Recommendations. 1, 33, 92

IACHR Inter-American Commission of Human Rights. 1

IACtHR Inter-American Court of Human Rights. 1, 12, 40, 54

IACW Inter-American Commission of Women. 1, 194

ICCPR International Covenant on Civil and Political Rights. 1, 196

ICESCR International Covenant on Economic, Social and Cultural Rights. 1

ICJ International Court of Justice. 1, 15, 28, 378

ICMW International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. 1

ICPD International Conference on Population and Development. 1, 146

IGOs Intergovernmental Organisations. 1, 16

ILC International Law Commission. 1, 41

IPV Intimate Partner Violence. 1, 11, 113, 228, 239, 308

Istanbul Convention Convention on Preventing and Combating Violence Against Women and Domestic Violence. 1, 31, 179, 240, 384

NATO North Atlantic Treaty Organization. 1, 16

NGO Non-Governmental Organisation. 1, 320

NGOs Non-Governmental Organisations. 1, 17, 178

OAS Organization of American States. 1, 168, 194, 309

Palermo Protocol I Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. 1, 140, 177

PAPD Programme of Action on Population and Development. 1, 149

PCIJ Permanent Court of International Justice. 1, 15

Rec(2002)5 Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe. 1, 384

RRW Rapporteur on the Rights of Women. 1, 194

UDHR Universal Declaration Human Rights. 1, 169

UN United Nations. 1, 16, 91, 183, 194, 228, 240

UN DESIPA United Nations Department for Economic and Social Information and Policy Analysis. 1, 149

UN GA United Nations General Assembly. 1, 7, 35, 91, 382

UN SG United Nations Secretary General. 1, 7, 92, 381

UN SRVAW United Nations Special Rapporteur on Violence Against Women. 1, 6, 37, 92, 156

UNCTOC United Nations Convention against Transnational Organised Crime. 1, 140

UNFPA United Nations Population Fund. 1, 149

VAW Violence Against Women. 1, 60, 91, 167, 227, 238, 308, 377

VDPoA Vienna Declaration and Programme of Action. 1, 147, 197

WHO World Health Organization. 1, 141

Introduction

> The forms of violence to which women are subjected and the ways in which they experience this violence are often shaped by the intersection of gender with other factors such as race, ethnicity, class, age, sexual orientation, disability, nationality, legal status, religion and culture. Therefore diverse strategies that take these intersecting factors into account are required in order to eradicate violence against all women.
>
> United Nations Secretary General, 2006

Violence Against Women (VAW) affects approximately one third of women globally.[1] This pervasive violence has been largely examined, discussed and elaborated upon in different fields and from different perspectives over the past 30 years. As a result of such endeavours, VAW is established today not only as a health issue or a matter of crime prevention and control, but as a form of discrimination, contrary to the equal right of men and women to the enjoyment of civil, political,

[1] World Health Organisation, Global and regional estimates of violence against women: Prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013.

economic and social rights.[2] In the process of recognition of VAW within human rights, basic feminist notions were incorporated into international and regional documents. While some notions have been more easily included, some still remain controversial twenty years later.

Until the 1970s, VAW, especially violence taking place in the private sphere, was generally regarded as incidental and a problem of only certain segments of society, largely linked to social class and lifestyle. The women's movement contributed to change that perception and to create awareness that certain forms of violence affected women specifically, as a pattern, and that such forms of violence were made invisible and remained largely overlooked by the law. Two notions helped revealing the structural nature of violence affecting women: the idea that women's subordination underlies the violence, and the role of gender.

Regarding the first notion, feminist authors asserted that the subordinated position of women derives from patriarchy, that is, the existence of family and societal arrangements in which males exercised predominant power.[3] According to Scott, there was no consensus regarding its roots, so while some authors found the explanation of women's subordination in the need of men to control women's reproductive capacity (O'Brien; Firestone), others considered that it was women's sexuality that triggered the will of domination of men (MacKinnon). Marxist feminists (Hartmann, Kelly) saw a connection between patriarchy and capitalism, and the school of psychoanalysis saw subordination as connected to the creation of the identity of the subject.[4] The idea of the male-dominated society was firmly introduced, and references to the 'historically unequal power relations between

[2]UN Committee on the Elimination of Discrimination Against Women (CEDAW Cee), CEDAW General Recommendation No. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), available at: `http://www.refworld.org/docid/453882a422.html` [accessed 2 December 2014]; United Nations General Assembly (UN GA), Declaration on the Elimination of Violence against Women (DEVAW), 20 December 1993, A/RES/48/104, available at: `http://www.refworld.org/docid/3b00f25d2c.html` [accessed 2 December 2014] ; Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention), 9 June 1994, available at: `http://www.refworld.org/docid/3ae6b38b1c.html` [accessed 2 December 2014] ; Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), 11 May 2011, available at: `http://www.refworld.org/docid/4ddb74f72.html`, [accessed 2 December 2014].

[3]This definition of patriarchy is borrowed from S. E. Merry. *Gender Violence: A Cultural Perspective* (Blackwell, 2009).

[4]J. W. Scott. 'Gender: A useful category of historical analysis' (1986) *The American Historical Review* 91(5):1053-1075, 1057-106.

women and men' are present in human rights documents on VAW.[5] The idea of women's subordination was crystallised in the norms as a recognition of a 'historical' situation, although sometimes resembling acceptance of an 'ahistorical' situation.

During the 1980s, the notion of 'gender' started to be elaborated and employed to ascertain women's inequality. Scott explains that early applications of the term 'gender' intended to direct attention towards women as a group.[6] Gender thus, meant women. For this reason, under international law, violence against women and gender-based violence are often used interchangeably. For instance, GR 19 provides a definition that seems to consider gender as equivalent to 'woman':

> Gender based violence is violence that is directed against a woman because she is a woman, or violence that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.[7]

Since those first references to gender, the notion has undergone important changes, still not properly reflected in human rights law. Gradually, 'gender' turned into an inherent element in the construction of social relations, and more importantly, in the configuration of relationships of power.[8] Merry explains that this significant transition from the notion of sex roles to 'gender' acknowledges that the relations between the sexes are of a social nature: differences between women and men are produced by a cultural process of socialisation and learning.[9] Analysing these dynamics became essential in order to understand the manner in which inequality works and how change can take place. This social construction of gender, and the asymmetry of power are narrowly captured by human rights:

> The term 'sex' here refers to biological differences between men and women. The term 'gender' refers to socially constructed identities, attributes and roles for women and men and society's social and cultural meaning for these biological differences resulting in hierarchical relationships between women and men and in the distribution of power and rights favouring men

[5] See: DEVAW, preamble; GR 19, para. 11; Belem do Para, preamble and Istanbul Convention, preamble.

[6] See Scott [1986].

[7] GR 19, footnote 2. However, the social construction of gender is elaborated throughout the rest of the text of GR 19.

[8] Scott [1986].

[9] Merry [2009].

> and disadvantaging women. This social positioning of women and men is affected by political, economic, cultural, social, religious, ideological and environmental factors and can be changed by culture, society and community.[10]

Otto argues that this binary view of gender (men/women) and the asymmetrical assumption (dominant men, subordinated women) is counterproductive since it reinforces naturalised views, leading to paternalistic responses to women's human rights violations, has exclusionary effects and enforces traditional views on women's sexuality, homophobia and trans-phobia.[11] Regardless of the binary depiction of gender illustrated by the quote, Holtmaat argues that the CEDAW convention still has additional value for addressing discrimination than standard norms prohibiting sex inequality.[12]

In the 1990s, the theoretical notion of 'gender as performance' emerged.[13] Butler argued that identity is not a manifestation of intrinsic essence but the product of actions and behaviours. Thus gender is created through tasks and activities, making possible for one person to 'enact' gender differently in different situations and for different audiences. Following this theoretical perspective, Merry explains that in many situations, doing violence is a way of doing gender:

> In some situations and contexts, the performance of gender identities means *acquiescing to violence* or *being violent*.[14]

According to this approach, gender based violence refers to violence which can be explained and justified by gender relations, covering men and women alike, and same sex relationships as well. However, there is a mismatch between this view of gender-based violence and the one captured by international law. Although 'gender' is today a broad and encompassing concept, it is not reflected in human rights, and particularly, the richness of such notion does not show in the legal definition of VAW. The international legal understanding of gender based violence

[10]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, available at: `http://www.refworld.org/docid/4d467ea72.html` [accessed 2 December 2014], 5.

[11]D. Otto 'International Human Rights Law: Towards Rethinking Sex/Gender Dualism and Asymmetry' in *A Research Companion to Feminist Legal Theory* (Ashgate Publishing Ltd, 2013).

[12]R. Holtmaat 'The CEDAW: A holistic approach to womens equality and freedom', in *Women's Human Rights: CEDAW in International, Regional and National Law*, A. Hellum and H. Sinding Aasen (eds). (Cambridge University Press, 2013).

[13]Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990).

[14]Merry [2009], 11. My italics

exclusively protects women suffering violence from men, excluding women victims of same sex abusers (at least in the private sphere) and excluding male victims even if they are victimised because of their gender, like the theoretical understanding of gender would suggest.

Women's subordination and gender, in their controversial normative translation, have become cornerstones of the current human rights framework on VAW. Yet there is another theoretical concept steadily capturing attention and starting to become visible in the field of human rights and violence against women that may create tension: intersectionality.

Intersectionality The underlying idea that there is a common, inherent attribute or experience shared by all women regardless of differences based on race, class or sexual orientation has been instrumental to bringing violence against women under the scope of international human rights. Yet, this generalising view of women was incapable of reflecting the experience of women belonging to a racial minority or to ethnic communities, casting back the position of 'privileged women', namely white, middle or upper class, heterosexual women. For this reason, feminists authors warned that 'a more complex understanding of oppression', as the one required to truly encompass the different realities of women, 'would not be compatible with a purely gender-centred analysis'.[15]

The focus on gender as the most significant ground of women's subordination became increasingly contested from the late 1980's on, considered to be restrictive and promoting a 'false universalism'.[16] During the early 1990's, theories challenging the notion of women amounting to a homogenous category were securing a

[15]H. Charlesworth, 'Feminist methods in international law', (1999) *The American Journal of International Law*, 93(2):379-394, 384. See for example claims from black and 'non-white' feminist scholars. Gloria T. Hull, Patricia B. Scott, and Barbara Smith, (eds). *All the Women Are White, and All the Blacks Are Men, but Some of Us Are Brave: Black Womens Studies*, (New York: Feminist Press, 1982); F. Anthias and N. Yuval-Davis, 'Contextualizing feminism: Gender, ethnic and class divisions', (1983) *Feminist Review*, 6275; B. T. Dill. 'Race, class and gender' (1983)*Feminist Studies* 9(1):131-150.

[16]Notably Scott [1986]; also: J. Flax. *Thinking Fragments: Psychoanalysis, Feminism, and Postmodernism in the Contemporary West*, (University of California Press, 1990); E. Spelman, *Inessential Woman* (Beacon Press, 1988); P. Hill Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*, (Routledge, 2008).

space in scholarly research and some women's movements. Among those, Crenshaw[17] coined the term 'intersectionality', highlighting the intersection of race and gender, yielding a new and qualitatively different form of discrimination. It was then recognised that women's race had a complex influence on the forms of violence that women suffer and the way they experience such violence. Together with race, the importance of 'seeing' other characteristics, such as social class, sexual orientation, migrant status, age, religion and disability became more commonly acknowledged.

The influence of categories other than gender in the subordination of women was to a certain extent reflected in the normative instruments at the time, although in different ways. GR 19 highlighted the special vulnerability of some women, like women living in rural areas and domestic workers. Later on, the CEDAW Committee would issue more general recommendations addressing women migrant workers (General Recommendation 27) and elderly women (General Recommendation 26).

By the mid 1990, the Beijing Declaration and Platform for Action[18] moved closer to what one could regard as an early intersectional approach, calling on governments to 'intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face multiple barriers to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.' In the year 2000, the UN Expert Group Meeting on Gender and Racial Discrimination examined the 'intersecting subordination' that women suffer based on their race and gender, and emphasised the urgent need to develop an *intersectional approach* to identify multiple forms of discrimination and its effect on women and girls.[19] This report resulted in General Recommendation XXV on Gender related dimensions of racial discrimination.[20]

[17]K. W. Crenshaw, 'Demarginalizing the intersection of race and sex: a black feminist critique of anti discrimination doctrine, feminist theory and antiracist politics.' (1989) *University of Chicago Legal Forum* 139-67; 'Mapping the margins: Intersectionality, identity politics, and violence against women of color', (1990) *Stanford Law Review* 43:1241.

[18]United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, available at: `http://www.refworld.org/docid/3dde04324.html` [accessed 2 December 2014].

[19]Gender and Racial Discrimination Report of the Expert Group Meeting. Available at: `http://www.un.org/womenwatch/daw/csw/genrac/report.htm` [accessed 2 December 2014].

[20]UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXV Concerning Gender related dimensions of racial discrimination, 20 March 2000, A/55/18, available at: `http://www.un.org/documents/ga/docs/55/a5518.pdf` [accessed 2 December 2014].

Over the past decade, the United Nations Special Rapporteur on Violence Against Women (UN SRVAW) contributed to create more momentum by drafting country reports and case studies.[21] The 2009 report clearly referred to 'intersectionality' as an important tool in the elimination of VAW.[22] The intersection of inequalities affecting women and the importance of adopting an intersectional approach in relation to violence against women has been repeatedly attested by other UN bodies as well, such as the United Nations Secretary General (UN SG) in his 'In-depth study on violence against women'.[23] Both bodies, the UN SRVAW and the UN SG, report to the United Nations General Assembly (UN GA). Consequently, the UN GA has urged States to 'ensure that diverse strategies that take into account the intersection of gender with other factors are developed in order to eradicate all forms of violence against women.'[24]

These developments suggest that intersectionality is slowly becoming part of the human rights framework on VAW, expected to reach out and include all women under the protection of human rights.

1 Problem description and research questions

Similar to the recognition of VAW as a violation of human rights, including intersectionality within human rights carries a strong symbolic meaning, that is, the recognition of the diversity of women and their different experience, making them visible and challenging essentialist views of gender. Furthermore, it disentangles the VAW project from western feminist ideas, recalling other voices and realities.

[21] The role of Special Rapporteur on VAW has been performed by Ms. Radhika Coomaraswamy (Sri Lanka), 1994 - July 2003; Dr. Yakin Ertürk (Turkey), August 2003 - July 2009 and Ms. Rashida Manjoo (South Africa), since August 2009.

[22] See for example, the characterisation of intersectionality included in the Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk: addendum: 15 years of the United Nations SR on violence against women, its causes and consequences (1994-2009): a critical review, 27 May 2009, A/HRC/11/6/Add.5, available at: `http://www.refworld.org/docid/4a3f5fc62.html` [accessed 2 December 2014], 31.

[23] UN General Assembly, In-depth study on all forms of violence against women: report of the Secretary-General, 6 July 2006, A/61/122/Add.1 (UNSG report), available at: `http://www.refworld.org/docid/484e58702.html` [accessed 2 December 2014], para 361.

[24] UN General Assembly, Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly, 30 January 2007, A/RES/61/143, available at: `http://www.refworld.org/docid/45fe45762.html` [accessed 2 December 2014].

Nevertheless, the reasons to include a social claim within a body of norms cannot be based only on the symbolic importance of the recognition, since such incorporation could transform the normative body into a mere aspirational framework, with little effect in real life. Based on the references to intersectionality found in the human rights documents, intersectionality is expected to extend the protection of the framework to women who are overlooked by purely gender based policies, and thus, ensure their enjoyment of human rights. Hence, intersectionality has a similar function to the one 'gender' had back in the 1970s for incorporating women's issues into the law, although this time for the recognition of the diversity of women. Identifying the potential benefits and limitations of incorporating intersectionality into the human rights addressing VAW is needed in order to protect the integrity and compelling force of the human rights framework.

As described in the previous section, the normative translation of intersectionality in relation to VAW within international human rights seems to be on its way. Bearing in mind that the rich theoretical capacity of 'gender' seems to have been severely restricted by its normative translation, in order to achieve the normative incorporation of intersectionality whilst preserving its full potential, a thorough analysis of the scope of the concept in relation to VAW is of the essence. This analysis is also needed because after four decades of theoretical elaborations, what intersectionality exactly entails and how to apply it to concrete human rights violations remains unclear. This has produced some skepticism and led some scholars to wonder if this is not a new *buzzword* of uncertain meaning.[25] Hence, theoretical and practical implications of intersectionality in relation to VAW need to be identified.

Furthermore, clarifying the meaning of intersectionality in relation to VAW, besides contributing to a more effective incorporation within human rights, may contribute to future State compliance. Research has shown that State willingness to conform with the norms is of crucial importance in this respect.[26] Two aspects are often considered to discourage States' compliance.[27] Firstly, vagueness about what the commitment requires. Satterthwaite points out that 'while normative clarity may not be *sufficient* to produce compliance, it certainly is a

[25]K. Davis, Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful, (2008)*Feminist Theory* 9:67.

[26]See: Risse, Ropp and Sikkink, *The Persistent Power of Human Rights, from commitment to compliance*, (Cambridge University Press, 2013).

[27]See Risse et al. [2013].

necessary condition'.[28] The need for clarification may be even stronger in relation to intersectionality and VAW due to the uncertainties around the perspective.

A second aspect that can negatively influence the willingness of States to comply with an intersectional approach to VAW is ignorance about the advantages that such approach could bring.[29] When the advantages of implementing an intersectional approach to VAW are not clear, States may become reticent towards implementation. Identifying the advantages of adopting an intersectional approach to VAW could thus influence States' willingness to implement it and comply with it. This thesis intends to gather empirical evidence of the potential benefits and advantages for cases of VAW derived from the application of intersectionality.

In short, the overarching research question of this thesis is:

> *What are potential benefits and limitations of incorporating intersectionality into the human rights framework on violence against women?*

The first step toward answering this question is to define the human rights framework on violence against women, and explore the meaning of intersectionality in relation to VAW. After establishing these two aspects of the research, the following sub-questions can be addressed:

> a) How is intersectionality currently positioned within the international human rights framework on violence against women and,
> b) What are the derived duties of States?

By answering these questions, the study will reveal to what extent intersectionality is already explicitly and/or implicitly incorporated in the human rights framework on VAW and what the consequences are for States.

Finally, the advantages and limitations of adopting such approach will be examined empirically, by replying to this last enquiry:

[28] M. Satterthwaite, 'Crossing borders, claiming rights: using human rights law to empower women migrant workers', (2005) *Yale Human Rights and Development Law Journal* 8.

[29] The use of cost-benefit analysis, once thought to belong purely to the field of economics, has become a very visible element of rational decision making in relation to policies and laws, where the 'benefit' refers now to 'advantages' more generally, instead of mere economic profit. The valuation, thus, is no longer entirely through an analogy with the market mechanism. One area where it has been widely used is environmental law. For instance, see: A. Sen, 'The Discipline of Cost? Benefit Analysis,' *The Journal of Legal Studies* 29(S2): 931-952; E. S. Quade, *Analysis for public decisions* (Englewood Cliffs, 1989); D. Weimer, (ed.) *Cost-benefit analysis and public policy*, (Wiley, 2009); M. A. Livermore and R. L. Revesz, (eds). *The Globalization of Cost-Benefit Analysis in Environmental Policy*, (Oxford University Press, 2013).

c) Can the application of an intersectional approach to VAW contribute to reveal gaps in legislation and policies, and if so how?

2 Methodology

The socio-legal nature of this thesis requires a combination of research methods. The two core theoretical elements of the dissertation, human rights and intersectionality, were examined through a literature study of research and theories on the importance of international human rights in the field of VAW, gender and the law, and intersectionality. This first review, reflected in chapters 1 and 2, revealed several aspects that guided the analysis of human rights documents addressing VAW, and informed the empirical analysis as well. The normative human rights documents on VAW were analysed following a systematic examination, explained in detail in chapters 3 and 4.

In relation to the empirical component of the thesis, a qualitative case study approach was adopted, using observation, semi-structured interviews and focus groups. Empirical data was gathered for two case studies in order to explore, by means of an intersectional analysis, possible gaps in legislation and policies on VAW. The first case study focused on a specific group of women victims of violence, Roma women, while the second case focused on women victims of violence with no pre-identified distinctions among them, yet all located in a complex geographical setting. The selection of the case study approach, the justification of the cases, the data gathering approach and the data analysis are explained in detail in chapters 5, 6 and 7.

3 Structure of the book

The book is divided into four parts. Part I is dedicated to the configuration of the theoretical framework. Chapter 1 examines the core normative principles which will guide the selection and interpretation of the human rights documents that will later be examined from an intersectional perspective. In doing so, I propose an approach inspired by the particular dynamics of elaboration of human rights norms and the mixed nature of existing human rights documents addressing this type of violence.

Chapter 2 provides a detailed analysis of intersectionality from the perspective of social sciences. It describes the guiding notions, principles and propositions commonly connected to the intersectional approach and highlights some of the elements that are relevant for cases of violence against women. I then propose two different techniques to be applied in the analysis of the human rights documents on VAW in order to discover whether and how intersectionality is positioned within them.

Part II explores the position of intersectionality within the international human rights framework on violence against women and the obligations regarding VAW. Chapters 3 and 4 constitute the core legal dimension of this book. In chapter 3, the intersectional techniques outlined in chapter 2 are applied to the analysis of the international human rights instruments and jurisprudence existing at the UN level. Chapter 4 contains a similar analysis, this time focusing on the Council of Europe (CoE) and the Organization of American States (OAS). Regional human rights systems often have a more direct influence on the acts of their State parties, and are therefore included. These two chapters provide a general overview of the current normative framework applicable to VAW.

Part III explores the empirical application of an intersectional perspective by means of two case studies on Intimate Partner Violence (IPV). The purpose of these case studies is to answer some questions that arise from the analysis of the normative documents of chapters 3 and 4, and explore whether the empirical application of an intersectional approach can discover gaps in legislation and policies on VAW. This Part comprises three chapters. Chapter 5 outlines the analytical framework used in the cases, while chapter 6 and 7 are dedicated to the case studies. These case studies gather the perceptions of victims of IPV and service providers. They result in an empirical assessment of two different approaches to intersectionality described in chapter 2, in connection to the two regional human rights systems examined in chapters 3 and 4.

Part IV is the integrative and conclusive stage, providing a critical assessment of the potentials and limitations of the incorporation of the intersectional approach into the human rights framework on VAW.

4 Terminology

Violence Against Women is to be understood in this thesis as any act or conduct, based on gender, which causes death or physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in the public or the private sphere. This definition resembles that of the Inter-American Convention,[30] with the addition of 'economical harm', included in the Istanbul Convention.[31]

The concept of *International Human Rights* included in this book refers to both hard law instruments (conventions and treaties) and soft law documents (declarations and general recommendations). *Human rights framework on VAW* indicates the set of international and regional human rights instruments and documents dedicated to violence against women selected for this thesis. *Norms* are considered here as mandates directed toward States requiring or expecting them to do or refrain from doing something, and they can derive from different bodies, with or without legislative powers, yet they must be intended as normative.

By *Human Rights Bodies* I refer to all permanent bodies, agencies and organs belonging to either the UN or the regional organisations, such as the CoE and the OAS, that are specifically mandated to regulate and evaluate human rights issues. These include expert committees for the monitoring of treaty compliance, such as the CEDAW Committee, and special mechanisms such as the UN SRVAW and Human Rights Courts, such as the Inter-American Court of Human Rights (IACtHR) or the European Court of Human Rights (ECtHR). By *UN bodies* I refer to bodies within the UN which are not formally dedicated to human rights, regardless of their occasional involvement on the topic, such as the General Assembly, or the Secretary General.

I use the notions of commitment and compliance proposed by Risse, Ropp and Sikkink. *Commitment* indicates that actors accept international human rights as valid and binding for themselves. It implies at a minimum some sort of statements that the respective actors intend to accept at least voluntarily codes of conduct as obligatory. *Compliance* is defined as sustained behaviour and domestic practices that conform to the international human rights norms.[32]

[30] Belem do Para Convention, footnote 2, article 1.
[31] Istanbul Convention, footnote 2, article 3(a).
[32] Risse et al. [2013], 9.

Finally, the notion of *international civil society* used in this book, borrowed from Charlesworth and Chinkin, includes not only NGOs but a range of both organised and not organised alternative and complementary grouping. It covers voluntary organisations, grassroots organisations and transnational social organisations, religious movements, professional groups and 'any body of persons that seeks to influence governments, to develop new modes of governance, to change international imperatives and to occupy political space.'[33]

[33]H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000).

Part I

Theoretical Framework

Chapter 1

The human rights framework on violence against women

> Human Rights is fundamentally a movement and its progress is maintained by the same irrepressible spirit and organized mobilizations that so recently forced recognition of private gender violence as a human rights issue and by those who continue to insist that gender violence, gender inequality and poverty are inextricable.
>
> Copelon (1994)

1.1 Introduction

The goal of this chapter is to establish the basic concepts guiding the configuration of the normative framework on Violence Against Women (VAW) that will be analysed in chapters 3 and 4. It starts with a critique of the traditional State centric view of international law in light of its inadequacy to address VAW from a human rights perspective. Then, a different approach is proposed, capable of assimilating

current international and regional developments into the human rights framework applicable to VAW. Next, the possibility to use the traditional sources of international law to establish human rights norms on VAW is discussed, and a justified selection of the type of documents that will configure the normative framework is provided. Furthermore, the guiding principles for identifying the obligations of the State in relation to VAW and principles governing the responsibility for their breach are elaborated.

1.2 The traditional State centric approach to international law and human rights norms on violence against women

When looking at violence against women in the context of human rights, it is inevitable to highlight the different approach taken in this specific field of international law in comparison to international law in general. The traditional approach to international law considered the State as the sole 'subject' of international law. States were the only entity capable of creating international law. The centrality of the State resulted in a strong emphasis on State consensus, essential for protecting their sovereignty and equality among them. This lead to considering formal agreements among States, such as conventions and treaties, as the main source of international law.[1] Consequently, the three 'primary' sources of international law included in Article 38(1) of the Statute of the International Court of Justice (ICJ) are conventions, custom and general principles of law, relying on the idea of an autonomous State freely choosing to accept or reject international law rules.[2]

In the field of human rights, however, we see that the centrality of the State (and its sovereignty) has considerably diminished.[3] The exclusive position of the State

[1]For a detailed view on the development of international law, see Shaw, Malcolm N. *International Law*, 6th ed. (Cambridge University Press, 2008).

[2]United Nations, Statute of the International Court of Justice, 18 April 1946, available at: `http://www.refworld.org/docid/3deb4b9c0.html` [accessed 4 December 2014]. This view was furthered supported by the ICJ in *The Lotus case*. S.S. Lotus (Fr. v. Turk.), 1927 Permanent Court of International Justice (PCIJ) (ser. A) No. 10 (Sept. 7) 18.

[3]Overcoming dated discussions regarding the tension between State sovereignty and the protection of human rights, States have acquired human rights obligations by becoming party to the many covenants, conventions and treaties on human rights, agreeing to the international monitoring of human rights situations within their territory. This is also the case in relation to violence against women, as shown in chapters 4 and 5, where States' obligations in relation to

has been challenged by the emergence of other non-State 'actors' participating in the international arena, such as Intergovernmental Organisations (IGOs) and an active civil society. However, the role and influence of these new participants vary depending on whether we look at the law-making process, the possibility to formally assume obligations, to implement them in practice, or become internationally responsible for their violation.

The ability of non-State actors, specially corporations and international organisations to *formally assume human rights obligations and incur international responsibility* for their breach is still limited. For instance, multinational corporations and international organisations such as the European Union (EU), North Atlantic Treaty Organization (NATO) or the United Nations (UN) are increasingly being examined through a human rights lens: they are expected to respect human rights and contribute to their protection, even without becoming party to international human rights instruments.[4] In relation to VAW, documents such as Declarations and General Assembly resolutions call not only on States to comply with the norms but also on the international organisations, the international community and NGOs. Yet, the State remains today the only actor whose compliance with human rights can be internationally assessed by judicial or quasi judicial bodies. The Vienna World Conference, inter alia, emphasised that the promotion and protection of human rights is 'the first responsibility' of governments.[5] The obligation to comply with human rights and the responsibility for any breach remains with the State. Regarding VAW, this position is indeed supported by human rights documents and commentators alike, confirming the State as main responsible for it.

At the UN level, debates about different human rights concerns take place systematically within bodies, commissions, experts committees and other mechanisms.[6]

VAW are addressed. Yet, regardless of such 'auto limitation' of their sovereignty, feminist scholars have elaborated on the State's shortcomings as a tool for the protection of human rights and the representation of minority interests, specially those of women. They argued that statehood in international law is much more than a formal, abstract structure. It is committed to a particular version of sexual difference and is, as such, unable to represent the interests of women. (See: H. Charlesworth and C. Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press, 2000)).

[4]On this topic see: Andrew Clapham, *Human Rights Obligations of Non-State Actors*, (Oxford University Press, 2006) .

[5]UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/-CONF.157/23, available at: `http://www.refworld.org/docid/3ae6b39ec.html` [accessed 4 December 2014], Part I, para. 1.

[6]M. E. McGuinness, 'Exploring the limits of international human rights law', (2006) *Georgia Journal of International and Comparative Law* 34(2-28), 19 and ss; A. Boyle and C. Chinkin,

Debates are also held within IGOs and Non-Governmental Organisations (NGOs) that participate to those negotiations. This interaction between different actors contributes to reveal deficiencies of the existing human rights norms and the need for revising and improving them. Accordingly, human rights norms are increasingly the result of debates among different actors during the law making process. Charlesworth and Chinkin confirm that 'the emergence of an international civil society has been advocated as a counter balance to the statism of international law and as a site for the generation of international law'.[7] Falk also argues that States are no longer the sole legitimate source of law-making and that ideas from other bodies should not be ignored when determining the international normative order.[8] Non-State actors can exert considerable influence, even when final documents are still agreed and signed by States.

Therefore, it is in relation to *the process of elaboration of norms* that I argue that today the State centric view has greatly diminished, particularly in relation to human rights norms on VAW. The existing international documents regulating VAW are a clear example of how different actors interact in the formulation of those norms. For instance, the Vienna Conference and the Declaration and Platform of Action,[9] the acceptance of DEVAW[10] by the General Assembly and the inclusion of sexual violence in the jurisdiction of the international war crimes tribunals were largely the result of the involvement of international civil society in the negotiations.

Furthermore, this process of elaboration of human rights has brought changes in relation to the type of norms and measures adopted, making *the content* of international human rights of mixed nature, that is, including legally binding norms, like conventions and treaties, and also 'soft law' documents, such as declarations, programmes and plans of action, far from the 'traditional' sources of international law. Today, human rights can no longer be exclusively considered as 'hard law', but as a body encompassing both legal and non-legal, yet normative, provisions. This

The Making of International Law (Oxford University Press, 2007); M. T. Kamminga and M. Scheinin (eds), *The impact of human rights law on general international law* (Oxford University Press, 2009); W. Osiatynski. *Human Rights and their limits* (Cambridge University Press, 2009).

[7] Charlesworth and Chinkin [2000] footnote 3, 169.

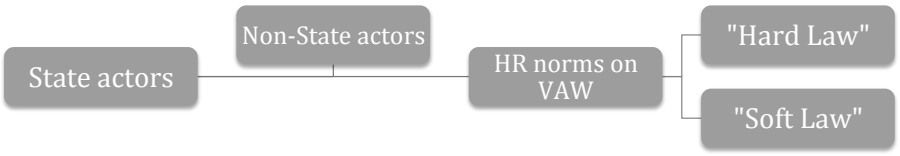
[8] R. Falk, 'The rights of peoples (in particular indigenous peoples)', in J. Crawford *The rights of Peoples*, (Oxford Clarendon Press, 1988), 17.

[9] Vienna Declaration and Programme of Action, footnote 5.

[10] UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, available at: `http://www.refworld.org/docid/3b00f25d2c.html` [accessed 4 December 2014].

is even more so in relation to the current international human rights framework applicable to VAW. This point can be illustrated by Figure 1.1.

FIGURE 1.1: Elaboration of human rights norms on VAW



This new configuration of the international arena, inclusive of multiple actors who engage in the law-making process, departs from the traditional notion of State consensus as the main element in the creation of law, and affects our view of the sources of international law today.[11] If we ignored the current situation and remained instead fixated on the old State centric approach to international law, most of the existing human rights documents on VAW would immediately be ruled out as 'non-law', considerably diminishing the spectrum of international obligations of protection of women against violence. For this reason, the analysis of norms in this dissertation will not only focus on traditional legally binding conventions and other traditional sources, but will include those other normative documents resulting from this type of interaction with non-State actors.

Below, the implications of having a 'mixed' framework of norms in relation to VAW is discussed in relation to the 'hard law'/ 'soft law' conundrum. The importance of multiple-actors will be discussed in relation to State compliance with such normative framework.

1.3 The importance of soft law for violence against women

In order to understand the implications of having a framework with legally binding and non legally binding norms on VAW, it becomes necessary to depart from a purely legalistic view and adopt an ethical perspective to human rights. This ethical view offers two main advantages. Firstly, it supports the view that a text may have some normative character without being legally binding.[12] This enables

[11] On this, see: Boyle and Chinkin [2007], footnote 6.

[12] J.-M. Sorel, 'The concept of 'soft responsibility' in *The Law of International Responsibility* 165-183, (Oxford University Press, 2010).

us to include documents dealing with VAW which although do not constitute 'law' in a traditional sense, fall under the category of 'soft law'. For example, the work of the CEDAW Committee technically qualifies as 'soft law'. Its task, particularly the issuing of general recommendations, is sometimes regarded as mere interpretative of the existing provisions in the CEDAW Convention, and sometimes as developing them further. UN General Assembly resolutions are considered as soft law as well, since although they are agreed upon by States, they do not follow the formal procedure of treaty making. Secondly, an ethical approach to human rights supports the interaction of multiple actors in the process of elaboration of norms and their implementation and compliance, and the adoption of measures of varied nature in order to address human rights concerns more effectively.

The approach to human rights encouraged by this dissertation considers human rights to be, first and foremost, *ethical claims*, that is claims which may generate *ethical demands*, or in other words, provide 'reasons to act' even in the absence of a legal duty to do so.[13] These ethical demands can in turn become 'norms', imposing some type of sanction when deviation from its mandate occurs. Human rights norms on violence against women are a useful example. Although claims that VAW was a violation of women's human rights and a form of discrimination emerged years earlier, in 1993 these claims gathered support during the Vienna Conference, becoming clear ethical demands. As a result of those deliberations, the Vienna Declaration and Platform of Action finally explicitly recognised VAW as a human rights issue, later on confirmed and further developed in several other human rights documents.

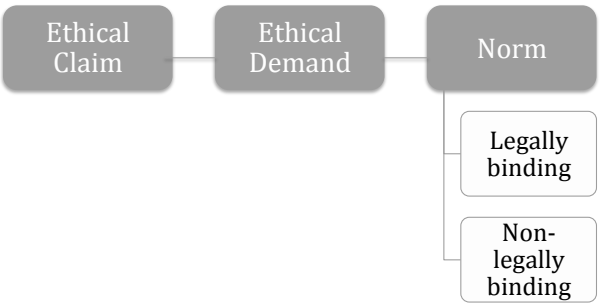
The process from ethical claim to norm is illustrated in Figure 1.2. Ethical claims that achieve a consistent level of support, are eventually transformed into ethical demands, which can be translated into two types of norms: 'legal' norms ('human rights laws'), creating binding obligations on States, and norms which, although not legally binding, provide valid reasons to act accordingly.[14]

The ethical view of human rights rejects the idea that legislation is the sole instrument in which the ethical force of human rights can be deployed, questioning

[13] A. Sen, 'Elements of a theory of human rights', (2004) *Philosophy and Public Affairs* 32(4):315-356.; 'Human rights and the limits of the law', (2006) *Cardozo Law Review* 27(6):2913-2927. and *The Idea of Justice* (Allen Lane, 2009); C. R. Beitz, 'Human rights as a common concern', (2001) *American Political Science Review* 95(2):269- 282 and *The Idea of Human Rights* (Oxford University Press, 2009); A. Etzioni. 'The normativity of human rights is self-evident', (2010) *Human Rights Quarterly* 32:187-197.

[14] Sen [2004].

FIGURE 1.2: Ethical view of human rights



whether it is desirable to always translate human rights into hard law, such as a legally binding convention, treaty or protocol. Sen suggests that the 'discipline' of human rights actually requires to distinguish legal norms ('legal proclamations') from ethical claims and to consider these as something more than mere 'laws in waiting', or 'pre- laws'. He argues that:

> it is important to give the general ethical status of human rights its due, rather than locking up the concept of human rights prematurely within the narrow box of an entirely legal approach.[15]

This suggests that human rights norms may be translated into legal forms and non-legal forms, turning the connection between human rights and 'soft law' inevitable. 'Soft law' describes principles, rules, and standards generated by States or other subjects of international law that do not stem from one of the sources of international law enumerated in Art. 38 (1) of the ICJ Statute[16], yet soft law can also form part of binding treaties. For example, treaties may contain clauses of a non-committal character, or provisions which provide for further negotiations, or which call upon the implementing agencies to take into account the relevant and current scientific standards, or to have regard to due diligence.

Similarities and distinctions between 'hard' and 'soft' law are quite nuanced. Despite its legally non-committal quality, soft law is characterised by a certain proximity to the law, and above all by its capacity to produce certain legal effects.[17] Different arguments are suggested in order to distinguish between them. For instance, it is often argued that, compared to 'hard law', in cases of 'soft law' there is a lack of sanctions following its violation, leading to limited compliance with the

[15]Sen [2006], 2921.
[16]Daniel Thürer, Soft Law, *Max Plank Encyclopaedia of Public International Law* [MPEPIL] 1469 (Oxford University Press, 2009).
[17]Ibid, para 9.

norm. In this regard, Sorel argues that soft law indicates an absence of sanctioned obligations, but not an absence of law.[18] Similarly, Thürer considers that the expectation of compliance with soft law norms is of lesser significance. He adds that the violation of soft law norms would trigger a less severe condemnation than if a State violates legal norms.[19]

Nevertheless, Sorel argues that while a breach of soft law is not likely to trigger the responsibility of a subject of international law in the traditional sense, that is between States, responsibility will simply have to be sought outside the traditional framework, for instance, in principles such as good faith. Responsibility would arise from the violation of a conduct which is not described as mandatory but which is supported by a presumption of good faith since it implies that any breach involves consequences.[20] Good faith implies a moral commitment based on the recognition of a 'defect'.[21] This does not mean that somehow good faith transforms soft law into binding law. Yet, despite the fact that it does not change the non-legal nature of soft law as such, good faith has the effect of legally protecting expectations produced by soft law norms in so far as it is justified by the conduct of the parties concerned.[22]

Another suggested distinction is that 'soft law' is a sort of 'pre-law'. For instance, Thürer argues that soft law could not be added as an additional source of international law, next to the three traditional sources of Art. 38(1) of ICJ Statute. It would be more appropriate, he says, to consider soft law documents as indications of the meaning behind, or the stages in, the development of international law, rather than as international law itself.[23] Similarly, Sorel argues that soft law refers to two phenomena: the loosely binding character of the norm on one hand, and the pre-legal value of some of the norms on the other hand. Yet, by trying to place soft law on equal footing with 'hard law' and reducing its use as interpretative tool or some premature form of law, both authors seem to forget that the purpose of soft law is to provide a norm *without being* equal to hard law. Such reductive understanding would indicate that although an enormous amount of energy and commitment was required for women to bring soft law instruments requiring the elimination of VAW into the international arena, the impossibility of placing these

[18]Sorel [2010], 168.
[19]Thürer [2009], para 6.
[20]Sorel [2010], footnote 12, 169.
[21]Ibid.
[22]Thürer [2009], para 27.
[23]Ibid, para 24.

documents on an equal footing with traditional sources of international law and their non-binding form would always reduce these norms to little more than empty expressions.

Yet another attributed distinction between hard and soft law, and perhaps the most worrisome in relation to VAW, is the lack of compliance with soft norms. For instance, Thürer argues that the juridical qualification of a specific norm can be decisive for the implementation of, and the compliance with, the norm.[24] However, the normative force of human rights, although traditionally regarded as an immediate consequence of the formal manifestation of the norm, does not seem to be necessarily correlated if measured in terms of compliance. The lack of binding legal consequences does not necessarily mean that States can simply disregard these norms or that they will not comply with them. Conversely, research shows that a formal commitment towards implementation does not automatically imply action in terms of adapting national legislation and creating the necessary infrastructure for bringing human rights into effect and, if necessary, enforce compliance.[25]

In fact, the connection between compliance and the more or less legally binding character of norms seems to be challenged by the international practice regarding human rights. Like the 'Spiral Model of Change' of Risse, Ropp and Sikkink suggests, compliance occurs for many reasons other than the rules' legal status, being that hard or soft.[26] Concerns about reputation (naming and shaming), reciprocity of expectations and other potential economic and political benefits or harms (incentives) will influence compliance with rules, especially human rights obligations. The reluctance of States often seems to be more related to the difficulty in implementing certain human rights and enforcing compliance, like it is the case with norms preventing and protecting from VAW, than the particular legal status of the norms. When this is the case, guiding and contributing in the implementation of norms seems more effective toward compliance than adopting 'harder' norms. Indeed, although ethical claims on violence against women have reached the level of human rights norms, State compliance has remained limited.

[24] Thürer [2009], para 23.

[25] See, for instance: Risse, Ropp and Sikkink (eds), *The Persistent Power of Human Rights, from commitment to compliance*, (Cambridge University Press, 2013). In particular, the chapter by B. Simmons, 'From ratification to compliance: quantitative evidence on the spiral model'.

[26] See: Risse et al. [2013].

Different explanations for (lack of) compliance with human rights norms, many based on empirical findings, have been offered in the past 30 years.[27] Sen suggests that the 'motivation' to act according to ethical claims, even those that have not been translated into norms with legally coercive force, depend on whether they have emerged through a process of 'open public reasoning', that is, a process of practical reasoning which any person could join, and where access to information is unrestricted. This reinforces Brunee and Toope's suggestion that legal 'norms' can only arise in the context of social norms based on shared understandings.[28] Similarly, the Spiral Model highlights the importance of socialisation processes in order to achieve compliance with human rights.[29]

The process of elaboration of human rights norms is directly connected to their legitimacy, and consequently, adopting norms through extensive debates involving different actors increases the legitimacy of the norms thereby elaborated as long as such debates are channeled through an open and inclusive process. The more accessible and inclusive the dialogue, the more legitimate it will be. The more legitimate the human rights' claims appear, the more willing actors will be to implement and enforce them, and this is the crucial aspect regarding VAW. Participation of multiple actors in the elaboration of norms works in two ways: adding legitimacy and favouring in their *enaction*. The level of agreement reached during the debates will also have a direct effect on the expectation of compliance. The importance of engaging multiple actors in order to achieve compliance with norms on VAW in particular is analysed further in the next subsection.

1.3.1 Non-State actors and compliance with human rights norms on VAW

It becomes of great importance to engage multiple actors throughout the complete process toward the elimination and prevention of violence against women. As previously discussed, engaging multiple actors in the elaboration of norms will increase the legitimacy of the norm and increase the level of commitment toward it. In addition, the involvement of multiple actors in the implementation of the norms

[27] For an overview, see: L. Camp Keith, 'Human Rights Instruments' in the *The Oxford Handbook of Empirical Legal Research*, (Oxford University Press, 2010).

[28] J. Brunnee, and S.J. Toope, 'An Interactional Theory of International Legal Obligation', *Legitimacy And Persuasion In International Law*, (Cambridge University Press, 2008).

[29] Risse et al. [2013], see footnote 25.

is also crucial in order to achieve full compliance in relation to VAW. Although these stages (norm creation, implementation and compliance) often follow each other in an iterative cycle I focus on the last two aspects.

In order to understand the relevance of engaging multiple actors for achieving compliance with human rights norms on VAW, it becomes necessary to consider the particular characteristics of the VAW. The Spiral Model considers that there are five phases toward compliance with human rights norms (repression, denial, tactical concessions, prescriptive status and rule-consistent behaviour). In relation to VAW, I consider that most States today have achieved at least the level of prescriptive status, that is, formally adhering to one or more human rights documents on violence against women. The movement towards the final phase, that of rule-consistent behaviour, is often blocked by different 'scope conditions'. In connection to human rights norms on VAW in particular, Brysk explains that violence against women constitutes a 'varying blend of State sponsored, State-delegated and wholly private wrongs'.[30] These 'multi-level wrongs' call for various dimensions of compliance - going from States refraining from committing the abuse through its agents, to removing the structural elements that facilitate the abuse - unlike in other types of wrongs which are always State-sponsored. For this reason, engaging multiple actors is particularly important if human rights norms on VAW are to be fully implemented.[31]

In addition, participation of multiple actors in relation to norms on VAW is important because compliance relies heavily on the degree of centralisation and control of the decision-maker. For this reason, inefficient or ineffective administrative structures and institutions hinder compliance by preventing States from enforcing and implementing central decisions. Brysk holds that in addition to the limited capacities of States, the inherent nature of VAW is a crucial aspect leading to involuntary non-compliance, since violence is committed by State and non-State actors, challenging State control even further.[32]

Brysk emphasises the power of persuasion to foster more decentralised compliance of non-State actors via transformation of social norms.[33] Persuasion has an advantage over either coercion or the manipulation of incentive structures because it

[30] A. Brysk.'Changing hearths and minds: sexual politics and human rights' in *The Persistent Power of Human Rights*, (Cambridge University Press, 2013), 263.
[31] Ibid, 262.
[32] Ibid, 259.
[33] Ibid, 272.

induces actors into voluntary compliance with costly rules and is more long-lasting as a socialisation mechanism.[34] The Spiral Model thus promotes *communicative action* as an element contributing to persuade actors toward compliance. Brysk explains how in her case studies as well, a combination of rational argumentation and principles with symbolic and emotional appeals persuaded 'hearts *and* minds.'[35] The increased persuasive effect of (legal) norms which are socially rooted and supported is also argued by Brunnée and Toope.[36] Hence, the connection between the hard or soft nature of the norm and compliance in relation to VAW becomes of limited relevance if persuasion and participation mechanisms are in place.

In sum, departing from a strict legalistic view of human rights and promoting soft law impacts on the types of responses States need to implement. In relation to VAW, the solution calls for a concerted multi-sectorial engagement and a variety of measures, encouraging State compliance. This position seems indirectly supported by the UN Secretary General. He pointed out some of the most relevant consequences of considering VAW as a human rights 'concern':

- It clarifies the binding obligations on States to prevent, eradicate and punish such violence and enhances the type of tools and mechanisms developed to hold States accountable at international and regional level.
- It empowers women suffering violence, positioning them as active rights-holders.
- It enhances the participation of human rights advocates, turning these also into stakeholders themselves. It incorporates the experiences of women and pays attention to their particular circumstances, including factors like race, ethnicity, class, age, sexual orientation, disability, nationality, religion and culture, contributing towards a fully universal understanding.
- Finally, it includes non-legal approaches to preventing and eliminating violence, such as education, health, development and criminal justice efforts, encouraging an indivisible, holistic and multi-sector response.[37]

[34] Risse et al. [2013], 4.
[35] Brysk [2013], 273.
[36] J. Brunnée and S. J. Toope. *Legitimacy and Legality, International Law, and interactional account* (Cambridge University Press, 2010).
[37] United Nations Secretary-General, In-depth study on all forms of violence against women, (2006), 18.

1.3.2 Keeping the hard - soft divide

Hard and soft law are not so different after all, then, at least in terms of sanctions and compliance. But does such similarity suggest they are to be seen as the same thing? It has been argued that soft law texts adopted at the UN level contribute to the 'flattening' of the divide between hard law and soft law.[38] Abbott and Snidal[39] and Shelton[40] have suggested that in international law such division has become so blurred as to become functionally irrelevant. Yet the positive effect about 'blurring' the difference between 'hard' and 'soft' law is not uniformly supported. Thürer suggest two reasons to keep the divide between hard and soft law. First, a norm is either legally binding or it is not, and it can either be invoked in a legal forum or not. Nevertheless, Sorel rightly points out that 'the judge and the sanction' are not per se the best guarantees for the execution of an obligation of international law.[41] The Spiral Model supports Sorel's view and contends that sanctions and coercion are only two of the mechanisms that can be used to encourage compliance, taking capacity building and persuasion as crucial in relation to VAW.

Secondly, the very authors of a non-binding rule often emphasise its non-binding character. Indeed, it should be made clear that, although some authors consider that soft law is 'pre- law' and just one step towards hard law, adopting soft law texts is often a conscious decision. There are reasons to purposely choose a softer form of law. One reason specially appealing for my thesis is that the majority of soft law texts and documents are adopted with the active participation of non-State actors, such as civil society, including experts and NGOs, and international organisations, often dedicated in full to the topic at hand. Their participation has two positive consequences: it increases the persuasive character of the norm, and it multiplies the number of interested parties monitoring compliance. Another reason for resorting to soft law is uncertainty about the development of knowledge, including economic, ecological, and scientific factors,[42] allowing for the level of flexibility needed to find effective approaches and policies toward VAW.

[38]See Van Genugten, Groenhuijsen, Van Gestel, and Letschert 'Loopholes, risks and ambivalences in international lawmaking; the case of a framework convention on victims' rights' *Netherlands Yearbook of International Law* 2007.

[39]K. Abbott and D. Snidal. 'Hard and soft law in international governance', (2000) *International Organization* 421-456, 422.

[40]D. Shelton, 'Law, Non-Law and the Problem of 'Soft Law'', in *Commitment and Compliance: The Role of Non-Binding Norms in the International Legal System* D. Shelton (ed), (Oxford, 2000), 1-18.

[41]Sorel [2010], 171.

[42]Ibid.

Although the reasons for keeping the divide between hard law and soft law argued by Thürer are not truly convincing when compared to international practice, I too support upholding the distinction since it is of importance in connection to VAW and human rights, as the next section suggests. The positive stance towards forms of soft law adopted in this thesis can be best expressed by quoting Sorel:

> What remains is for the process to evolve towards crystallisation of norms which will perhaps be recognised in the future and therefore will become projects of progressive development of international law. In the meantime, let us hope that the soft will not change into the hard but will remain what it intrinsically is. If not, we would be back at the starting point.[43]

This thesis regards the coexistence of hard law and soft law documents within the international human rights framework as positive and suggests that soft law documents are not mere laws in a preliminary form. Documents may adopt a 'soft' form as final, and still generate directly applicable norms. More importantly, it seems clear today that whether norms are translated into 'hard' or 'soft' law, is of limited importance in terms of compliance. These notions are of crucial importance for the configuration of the international normative framework on VAW.

In section 1.4 I will examine to what extent the traditional sources can be used in order to select the human rights documents forming the normative framework on VAW, and clarify some guiding principles for the analysis of those human rights documents on VAW.

1.4 Obligations of the State in relation to VAW

The traditional view on the international obligations of the State rests on three main principles which have all been challenged to different degree by developments within international law and more importantly, within human rights. Firstly, the international obligations of States arise from the formal sources of international law as enumerated in Article 38(1) of the Statute of the International Court of Justice (ICJ), which reads:

[43] Sorel [2010], 171, in relation to the legal framework that needs to be created for the implementation of responsibility of international organisations.

> The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:
>
> 1. International conventions, whether general or particular, establishing rules expressly recognised by the contesting States;
> 2. International custom, as evidence of a general practice accepted as law;
> 3. The general principles of law recognised by civilised nations;
> 4. Subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.[44]

Secondly, international obligations are primarily owed between States, in a bilateral manner. These principles have limited application to human rights obligations on VAW. I will elaborate on the limitations of solely considering sources of law deriving from art. 38(1) of the ICJ Statute in subsection 1.4.1. The second principle, that international obligations concern a State vis a vis another State, does not correspond with human rights, since these create obligations of the State toward its nationals, besides other States.

Finally, the third principle governing the international obligations of States considers that, unlike at the domestic level, at the international level there is no hierarchy of norms,[45] although this notion has been abandoned in support of the notion of *jus cogens*, pointing to the existence of fundamental legal norms from which no derogation is permitted.[46] The doctrine of *jus cogens* in international law brings several consequences. For instance, it affects statehood since it poses limitations to sovereignty to which the State did not necessarily 'consent', meaning that if States violate a norm of *jus cogens*, it cannot take refuge in claims of sovereignty. Also, if a new peremptory norm of general international law emerges, any existing treaty which is in conflict with a norm becomes void and terminates. Peremptory norms could be seen as a first step in departing from the consensual tradition. All positive aspects for addressing VAW, if it could aspire to the status of a peremptory norm.

[44]ICJ Statute, footnote 2

[45]Kamminga and Sheinin (eds), *The impact of Human rights law on general international law*, (Oxford University Press, 2009).

[46]United Nations, Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, available at: `http://www.refworld.org/docid/3ae6b3a10.html` [accessed 4 December 2014], article 53; and International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1, available at: `http://www.refworld.org/docid/3ddb8f804.html` [accessed 4 December 2014], articles 40 and 41.

The International Law Commission (ILC) has observed that it is the particular nature of the subject matter that determines whether a norm has the character of peremptory.[47] Peremptory norms are substantive rules of conduct that prohibit what has come to be seen as intolerable because of the threat it presents to the survival of States and their peoples, and harm the most basic human values.[48] The norms that are commonly considered to have attained this status are the prohibition of genocide, slavery, murder, disappearances, the right to life, torture, prolonged arbitrary detention and systematic racial discrimination. Although these violations of human rights are of undoubted seriousness, authors argue that they do not reflect the main concerns of women.[49] Thus, while racial discrimination is considered an international legal concern in the context of statehood, gender discrimination is not. Charlesworth and Chinkin noted that discrimination on the basis of sex has never been understood by the international community of States to be as structured, serious or damaging as racism.[50] Nevertheless, General Recommendation 25 of the Committee on the Elimination of Racial Discrimination, on Gender related dimensions of racial discrimination may be a hint toward some change in that respect.[51]

1.4.1 Sources of the human rights obligations on VAW

I should perhaps start by pointing out that there is no such a thing as a uniform code of international law, reflecting all the obligations of all States.[52] Even under general international law, which might be expected to be virtually uniform, different States may be differently situated and therefore may have different obligations and responsibilities. What exactly constitutes a breach of international law by a

[47]ILC, Commentary to Draft articles on the Law of the Treaties, adopted by the International Law Commission at its eighteenth session (1966), available at: `http://legal.un.org/ilc/texts/instruments/english/commentaries/1_1_1966.pdf`, [accessed 4 December 2014].

[48]ILC, Commentaries on the Report of the International Law Commission, 53rd sess., UN GAOR, 56th sess., Supp. No 10, UN Doc. A/56/10 (SUPP) (2001), available at: `http://legal.un.org/ilc/reports/english/a_56_10.pdf` [accessed 4 December 2014], article 14 (3).

[49]Charlesworth and Chinkin [2000].

[50]Ibid.

[51]UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXV on gender-related dimensions of racial discrimination, 20 March 2000, A/55/18, available at: `http://www.bayefsky.com//general/cerd_genrecom_25.php`, [accessed 4 December 2014].

[52]J. Crawford, A. Pellet, and S. Olleson (eds), *The Law of International Responsibility* (Oxford University Press, 2010).

State depends on the actual content of its international obligations, and especially as far as treaties are concerned, this varies markedly from one State to the next.

The sources of law define the process whereby rules of international law emerge.[53] Article 38(1) of the Statute of the ICJ[54] remains widely cited as the authoritative list of the sources of international law. In the subsections below I discuss the usefulness of each of these traditional sources for identifying norms in relation to VAW, and what additional sources appear as relevant when traditional ones are either inapplicable or too limited.

International Conventions Inspired by the liberal doctrine, concluding a convention has been considered as the most clear manifestation of State consent and its commitment with the provisions therein. In the case of multi-lateral treaties, a certain level of consensus on the topic can be assumed. Yet, two elements challenge the idea of strong consensus behind multilateral treaties: firstly, the level of ratification, and secondly, the reservations made by the States. In the case of VAW no *international* binding convention has been adopted yet. Does this indicate that States and the international community do not consider VAW as an international concern? Do States have no international obligation to address cases of VAW? The answer to these questions needs to take into account the developments in the area of VAW that have occurred since the early '90s.

In the past 30 years three legally binding instruments covering VAW have been adopted, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention),[55] the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa ('Maputo Protocol') and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention),[56] all currently in force. These conventions neatly fall under art. 38 (1) of the ICJ Statute,

[53] See Brownlie, *Principles of Public International Law*, (Oxford University Press, 2003); Shaw [2002].

[54] ICJ Statute, footnote 2.

[55] Organization of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Belem do Para Convention'), 9 June 1994, available at: `http://www.refworld.org/docid/3ae6b38b1c.html`, [accessed 4 December 2014].

[56] Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, available at: `http://www.refworld.org/docid/4ddb74f72.html`, [accessed 4 December 2014].

and their binding nature is of course not challenged. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Optional Protocol to the CEDAW Convention (CEDAW-OP) have been widely ratified as well. Some caveats, however, can be found.

Regarding the level of consensus behind these conventions, it should be pointed out that there are many reservations to those articles dealing with women's issues which are contested at the domestic level. Examples can be the many reservations made to Article 16 of CEDAW on matters relating to marriage and family relations. In connection to ratification, the Belem do Para Convention has been so far ratified by all States in the Americas, with the exception of two States, the United States of America and Canada. The Maputo Protocol has been ratified at the time of writing by 36 States and signed by 15, leaving only 3 States with no type of recognition.[57] Regardless of these shortcomings, the adoption of these formal instruments point to the willingness of the States to adhere to some international standards addressing VAW and indicate a certain level of commitment of the signatory States toward human rights norms on VAW.

In addition to these traditional 'conventions', several other documents also indicate the commitment of States toward VAW, at least to some extent. For instance, a UN Declaration on VAW has been adopted by the General Assembly, and many other General Assembly resolutions addressing VAW have been passed. All of these show the consent of the States adopting them, yet they technically constitute 'soft law', and as such, are excluded from the extract reading of Art. 38(1), in spite of being crucial elements of the existing framework on VAW. Hence, focusing on 'conventions' as the only possible source of law would not reveal the extent to which States actually see VAW as an international concern and act accordingly.

There are other instruments that also amount to 'consensual' sources of international law. Today, several conventions are complemented by new additional protocols that have been voluntarily adopted by States, and in doing so, States agree to different monitoring mechanisms. States are then bound by the decisions made by the bodies entrusted with the monitoring task. For instance, the UN Committee on the Elimination of Discrimination Against Women (CEDAW Cee), issues General Observations during the reporting procedure to monitor the implementation (periodic reporting) and General Recommendations in order to

[57]By December 2014, the non signatory States are: Botswana, Egypt, and Tunisia.

illustrate the content of the Convention and provide guidance in its domestic implementation. These documents are only 'indirectly' consensual, and clearly 'soft law' instruments. Can we safely argue that such decisions are not binding on States and do not constitute part of international law?

Regarding the compelling nature of General Recommendations, it could be argued that their binding character derives in fact from States' consent, having agreed to CEDAW and to the additional protocol in relation to individual views. Yet if this argument is not convincing enough, one still could argue that GRs remain compelling, if not legally binding, by extending the application of the principles of interpretation regulating treaty law to include them based on their accessory nature to the Convention. Indeed, the Vienna Convention of the Law of Treaties states that treaties, in this case the CEDAW Convention, need to be interpreted in good faith and in light of the object and purpose of the treaty. General Recommendations are instrumental to these ends, and although perhaps not binding by themselves, States need to 'enact' them, as Sen would put it.

This suggestion is further reinforced by the introduction of GR 28[58] which holds that the Convention is a 'dynamic instrument' that has been the matter of clarification and elaboration by the Committee and other actors. It then enumerates a set of instruments and documents, both binding and non-binding, part of the framework. The dynamism of the Convention is noted in connection to the continuous elaboration on the scope of obligations of the State. These obligations continue to be defined decades after the adoption of the Convention, by the recommendations of the Committee and also, by the views on individual complaints and country reviews.

Hence, whether general recommendations, such as those of the CEDAW Committee, constitute part of international law can hardly be answered in the negative. Even when denying their character as a source in the sense of Article 38(1) of the ICJ, they clearly create 'an expectation of compliance' and their breach would lead to consequences, even if not judicial ones.

In sum, in relation to human rights norms on VAW, beside the traditional sources, that is 'conventions', new sources of 'soft law' norms need to be included, whether

[58]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010, CEDAW/C/GC/28, available at: `http://www.refworld.org/docid/4d467ea72.html` [accessed 4 December 2014].

they are directly 'consensual', like declarations and General Assembly resolutions, or 'indirectly consensual', like General Recommendations (GRs) of the expert committees. The first category of sources found in article 38(1) of the ICJ thus needs to be expanded in order to properly include human rights obligations of VAW.

Customary international law International custom has been the preferred 'alternative' source of law when no convention has been adopted, in spite of being complex and difficult to prove. Customary international law consists of two basic elements. State practice, and the belief that an action needs to be carried out because it constitutes a legal obligation *(opinio juris)*. In other words, in order for State practice to qualify as custom, the practice must be carried out in a way that confirms a belief that such practice is obligatory because the rule of law requires it.[59] Let us analyse these two elements separately in connection to violence against women.

Traditionally, in order to determine State practice, more value is attached to the physical acts (actions) of States rather than to their verbal acts (statements). This brings some clear difficulties in asserting that violence against women constitutes a breach of customary international law since State practice is not consistent with such a norm, either because States act contrarily, inflicting violence on women directly, or simply do not act accordingly, for instance, by not protecting them from violence inflicted by third parties. Similarly, it is sometimes difficult to determine what omissions mean because abstentions often occur out of a sense of a legal obligation.[60]

However, it is possible to refer to the statements of governments in order to ascertain State practice.[61] This approach could contribute to regard VAW as a customary norm since several forms of violence have been formally condemned - by prohibiting or criminalising it - in a significant number of States, suggesting a growing State practice in this regard. Yet, although inferring State practice by

[59]North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands) , I.C.J. Reports 1969, p.3, International Court of Justice (ICJ), 20 February 1969, available at: `http://www.refworld.org/docid/50645e9d2.html` [accessed 4 December 2014], 77.

[60]Kamminga [2009], 7.

[61]J. Wouters and C. Ryngaert, Impact on the process of the formation of customary law, in *The impact of human rights law on general international law* (Oxford University Press, 2009), 115 ; Charlesworth and Chinkin [2000], 71.

means of verbal acts may perhaps allow for the inclusion of VAW under customary law, the material acts of States could still be very easily recalled to deny this. If formal condemnation is not to be considered as a mere statement, it must be supported by practice.

An alternative solution to compensate inconsistent State practice could be to emphasise *opinio juris*, and give a less prominent role to State practice.[62] Wouters and Ryngaert also suggest that often a statement may evidence both opinio juris and state practice, 'killing two birds with one stone'.[63] Government 'statements' condemning VAW for instance, can be considered to confirm opinio juris and serve as the basis for a customary norm in this respect.[64]

Three additional aspects also seem relevant in the determination of customary law. International doctrine considers a high level of agreement among States to be important for the establishment of opinio juris, particularly agreement among the most powerful States. Secondly, in order to assert international custom, the ICJ has indicated that the use of norm-generating language, rather than aspirational language is important. Finally, although normative instruments cannot become binding merely through repetition, it can provide evidence of a growing opinio juris as well. Moreover, the repetition of statements across different international fora arguably strengthens this perception. chapter 3 and 4 show that many measures are indeed repeatedly emphasised by different documents and bodies.

Let us recall here the suggested elements for the identification of customary law and apply them to some of the texts existing today at international level. State practice need to be consistent, and this can be demonstrated by material or verbal acts, particularly by government statements, which are to some extent backed by material acts. Government statements can be used for establishing opinio juris as well, which can be emphasised in case of contrary State practice. The level

[62]Kirgis, Schachter and Tomuschat, cited by Charlesworth and Chinkin [2000]; Wouters and Ryngaert [2009], 111. This was arguably supported by the ICJ in the *Nicaragua* judgment, which has indicated the relevance of General Assembly resolutions as evidence of *opinio juris*. See: Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986, available at: `http://www.refworld.org/docid/4023a44d2.html`, [accessed 4 December 2014], see paras 184 - 190. The judgment states that opinio juris precedes state practice and that inconsistent conduct is to be viewed as the violation of a established rule.

[63]Wouters and Ryngaert [2009], 115.

[64]A.E. Roberts, 'Traditional and Modern Approaches to Customary Law: a Reconciliation' (2001), cited by Wouters and Ryngaert [2009].

of agreement among States will also reinforce opinio juris. Also, texts should use normative language, at least to some extent.

Given that the ICJ has positively regarded the resolutions of the United Nations General Assembly (UN GA) as evidence of opinio juris, and numerous UNGA resolutions express concern about the situation of women, condemning VAW and calling on States to take a wide variety of measures have been adopted, I analyse below if it is possible to consider them as customary norms on VAW.

UNGA resolutions seek to inspire States' actions. In this sense, they use normative language and are intended as a form of regulation, perhaps soft and weak, yet a certain behaviour is indeed expected. Thus, although not 'binding', UNGA resolutions generate an 'expectation of compliance', consistent with the ethical approach to human rights discussed in section 1.3 and conforming to the requirement of 'norm generating language'.

Luard points out that the General Assembly is the meeting point where representatives of different regions gather to discuss common problems and a platform for debating views, sometimes widely supported.[65] Since each Member State holds one vote regardless of its size or economical power, it is also regarded as the most democratic instance within the UN. Although Luard does not refer to the UNGA resolutions as constitutive of *opinio juris*, he considers that the General Assembly's voice 'carries considerable moral authority.'[66] This moral weight, or 'persuasive power' commonly attributed to UNGA resolutions derives from the belief that they result from consensus among States.

The level of agreement among States will contribute to the persuasiveness of the resolutions, and also to the determination of customary norms. Therefore, a resolution needs to be adopted with as many affirmative votes and as less negative votes as possible, especially from the most influential states. The method of adoption is thus crucial in this respect. The adoption of unanimous resolutions, which could certainly be regarded as representative of international *opinio juris* and move closer to customary law, although possible, is not common within the UNGA due to the voting system. Regarding the procedure, informal voting is favoured over roll-call voting, and often oppositions and abstentions are not recorded. Resolutions passed in this manner are normally labeled as 'without a vote', 'by acclamation'

[65]E. Luard. *The United Nations, How it Works and What it Does* (MacMillan, 1994).
[66]Ibid, 38.

or 'by consensus', which in practice undermines intents to establish customary law via UNGA resolutions.[67]

Although the mechanism of 'consensus' helps in avoiding negative votes, removes the potential for confrontation and gives the appearance of acceptance by all interested groups, it does not mean that there was no opposition to the resolution. Only the complete rejection of a draft would preclude a resolution from being adopted 'by consensus'. In addition, consensus may conceal the imbalance of power during negotiations and the resulting text may in fact be the product of compromise on the elimination of controversial or far-reaching provisions. On the other hand, even with roll-called unanimous decisions, resolutions might not be immediately legally binding given, strictly speaking, that UNGA's resolutions are legally binding only when they refer to its internal organisation and functioning.[68]

This indetermination of the level of agreement behind the resolutions adopted constitutes the strongest challenge to the idea of UNGA resolutions as constituting customary law on VAW. Nevertheless, these still constitute soft law instruments, providing norms to the human rights framework on VAW delineated in chapter 4. Moreover, the impact of these resolutions will not only be dependent on the number of resolutions passed or the number of favourable votes but also on the level of States compliance. Considering the instruments and mechanisms adopted as a consequence of these resolutions, and the extent to which Member States are willing to adhere and implement them at national level will help in establishing the real impact of the resolutions. If from passing a resolution no further consequences can be tracked, it reflects States' limited willingness to commit.

UNGA resolutions that fall under the category of 'declarations', however, are more commonly acknowledged as normative, and also closer to 'legal' norms. These are often regarded as a political commitment of the member States towards some goal. Although it is formally a legally non-binding instrument, a declaration still carries greater weight than a resolution. Declarations often intend to codify existing rules of customary law, or particularise the provisions of an international treaty[69] and

[67]The general rule for passing resolutions within the UNGA requires a simple majority of votes of the present and voting Member States. A qualified majority of two-thirds is needed for important decisions only.

[68]Luard [1994], 38.

[69]See for example UN General Assembly, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, 24 October 1970, A/RES/2625(XXV), available at: `http://www.refworld.org/docid/3dda1f104.html` [accessed 4 December 2014].

some turn into conventions, or even customary law.

Charlesworth and Chinkin suggest that the Declaration on the Elimination of Violence against Women (DEVAW),[70] adopted by the General Assembly in 1993 'has the potential to generate State practice and *opinio juris* to crystallise into customary international law.' Nevertheless, DEVAW was adopted by consensus, and several sections were removed from its text in order to be adopted, and contains mainly aspirational language. Moreover, obligations to implement the purposes of the Declaration are not couched in mandatory terms. Although the appointment of a United Nations Special Rapporteur on Violence Against Women (UN SRVAW) suggests an intention to monitor closely DEVAW's implementation, the Declaration has no enforcement provisions, making it easier to dismiss it as mere rhetoric. Deriving customary law from DEVAW alone is thus still improbable.

Nevertheless, Kamminga suggests that 'techniques for the identification of rules of customary international law differ depending on the subject matter'.[71] Regarding VAW, it could be argued that the consistent reaffirmation by UNGA resolutions of principles embodied in the DEVAW increase the legal value of the Declaration, and seen together a body of opinio juris can be perceived. The lack of consistent opposition of powerful States is also an encouraging element. In time, perhaps, it may become possible to regard VAW as customary law.

However, based on the particular position of this thesis in relation to 'soft law', fixating our efforts in determining a 'customary norm' on VAW and ignoring the normative value of the already existing norms, would in fact distract us from the useful and effective mechanisms we already have at hand. For a similar reason, the suggestion that the beginnings of an internationally applicable treaty might be founded in the DEVAW, and as such generate customary principles, does not fully fit our theoretical approach either. Considering a 'declaration' as a road inevitably leading towards a 'convention' is not an inherently positive approach, even when the final goal would be to incorporate norms on VAW as customary law in the future. Like I suggested in the previous section, 'soft law' is not a 'preliminary law', but can remain 'soft law' and retain its normative value.

General Principles of Law The 'general principles of law recognised by the civilised nations' was included as a source of international law in order to prevent

[70] DEVAW, footnote 10.
[71] Kamminga [2009], 8.

possible situations of *non liquet*, that is, a situation where there is no applicable law. Simma and Alston emphasise the use of general principles of law as contemporary source of human rights law.[72] Charlesworth and Chinkin have also considered the general principles of law positively, arguing that including this source of law would retain the consensual basis of international law while overcoming many of the conceptual and practical problems of customary international law, in particular the need to prove State practice and *opinio juris*.

Yet there are different opinions as to where these principles should be derived from. Some commentators derive them from natural law concepts while others derive them from international practice (although this may become a loop). There are some concerns with deriving general principles from national law when it relates to VAW since they could transpose the problems found at the domestic level to the international level. In this respect, two main concerns have been voiced by feminist commentators: that law reflects male interests and that women subordination derives from the structure and substance of law.[73] Looking at the decisions of the ICJ, however, it is not always clear whether the principles are derived from domestic jurisdictions or from international law.

Three principles outlined in the case law of the ICJ seem relevant to cases of VAW. Firstly, that every violation of an engagement involves an obligation to make reparations.[74] Some authors consider that this principle is not limited to the violation of legally binding obligations, but may extend to cover those commitments embodied in soft law.[75] Secondly, the general principle of *pacta sunt servanda*, indicating that agreements require compliance. And finally, the principle of good faith, which as argued in section 1.3 on page 24, plays a role in reinforcing the normative value of soft law. The ICJ has stated that:

> One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international cooperation, in particular in an age when this co-operation in many fields is becoming increasingly essential.[76]

[72] B. Simma and P. Alston. 'The sources of human rights law: Custom, jus cogens, and general principles', (1988) *Australian Year Book of International Law*, 5(12):1988-1989.

[73] See Charlesworth and Chinkin [2000]. These concerns, nevertheless, have been voiced about international law as well. For these commentators then, referring to law in general would hold these caveats.

[74] *Factory at Chorzow* (Germ. v. Pol.), 1928 PCIJ (ser. A) No. 17 (Sept. 13), 29. This principle is elaborated further in section 1.5.2 on page 55.

[75] See Crawford et al. [2010].

[76] *Nuclear Tests Case (Australia v. France)*, ICJ, 20 December 1974, 268.

Shaw points out that the principle of good faith informs and shapes the observance of existing rules of international law and determines how those rules are to be legitimately exercised, yet it relates to the fulfilment of already existing obligations.[77]

The limited scope of this source of law has been addressed by commentators and the ICJ itself. Feminist commentators have pointed out how the concept of general principles in itself needs to be expanded, suggesting that they may be found in statements of consensus, such as those expressed at global summits and the 'soft law' resolutions of the organs of the UN. Such a 'compilation' of principles, although interesting and potentially useful in situations of *non-liquet*, exceeds the purpose of this research. In the meantime, the three principles included in this section may reinforce the normative force of other human rights documents included in this thesis.

Subsidiary sources of law According to art. 38(1) (d) of the ICJ Statute, *judicial decisions* constitute subsidiary means for the determination of rules of law.[78] Although traditionally the ICJ has been the Court considered to provide the relevant case law, in the 1990s there has been a proliferation of international tribunals that supplement the ICJ and the regional human rights courts. In relation to VAW, it has actually been the Human Rights Courts and the international tribunals that have issued judgments of interest. Including such judgements among judicial decisions constituting sources of international law is possible since 'judicial decisions' is commonly understood as including arbitration and domestic rulings as well. With this in mind, cases of the regional Human Rights Courts dealing with VAW are discussed in chapter 4, in the sections dedicated to the Inter-American Court of Human Rights (IACtHR) and the European Court of Human Rights (ECtHR).

A few aspects should be clarified in respect to this subsidiary source of international law. Although, unlike in the Common Law tradition, there is no doctrine of precedent applicable in international law, international courts tend to apply the same principles to similar cases, trying not to endanger the legal certainty of the system. Moreover, these judgements are often quoted as authoritative sources by States and other Courts as well, 'sometimes in support, sometimes to disagree'.[79]

[77] Shaw [2002], 104.
[78] Ibid, 109.
[79] Ibid, 111.

In chapter 4, this reinforcing dynamic will be illustrated, showing how certain notions can be found in all regional Courts and also, how some notions peculiar to one system are nevertheless commented in another.

The other subsidiary source of international law listed in article 38(1) (d) is *the work of the most highly qualified publicists of international law.* Shaw reminds us that writers can 'reflect and reinforce national prejudice', which as argued above, in relation to VAW would call for extra caution. Charlesworth and Chinkin argued in 2000 that in addition, writers have been predominantly male and as such, commonly not guided by women's interests. Yet, since then, we can point to many female and feminist authors who have published profusely, some of them being also directly involved in the drafting of legislation.[80] Nevertheless, of all sources of law, this seems to be the one which has mostly declined with the rise of positivism, and is only of 'interpretative' value for this thesis.

To conclude this section on sources of obligations, based on the arguments expressed above, I suggest that there is all in all a broader view on what can be considered as a source of international obligations today, particularly in the field of VAW. These documents providing international norms on VAW do not all posses the same level of normative value. The normative character of documents varies to different degree, and is based on whether these are hard law or soft law, but among the latter, the normative character is also based on a number of additional elements, such as the level of agreement reached in the adoption process, and the type of language used.

In chapter 3 I will therefore include human rights documents which I have argued may potentially fall within or close to the traditional sources of article 38(1) of the ICJ Statute, that is, conventions when available, general recommendations, concluding observations and individual views of the CEDAW Committee. DEVAW is also included, followed by the rest of General Assembly resolutions. Finally, I include the declarations and platforms resulting from some global summits.

[80]For an interesting account on the 'institutionalisation' of feminist claims in international instruments see: J. Halley, P. Kotiswaran, H. Shamir, and C. Thomas. 'From the international to the local in feminist legal responses to rape, prostitution/sex work, and sex trafficking: Four studies in contemporary governance feminism', (2006) *Harvard Journal of Law and Gender*, 29:335-423.

1.4.2 Scope of human rights obligations on VAW

In order to determine when and if States have breached an obligation, the International Law Commission (ILC) has explained that it depends on the precise terms of the obligation, its interpretation and application, taking into account its object and purpose and the facts of the case'.[81] This indicates that in order to determine the material content of the obligation, one must not only attend to the letter of the law, that is the conventions in cases where these exist, or the general recommendations in the case of CEDAW, but also, one must pay attention to the interpretation and application of monitoring bodies, whether these are judicial or not. In this section, I elaborate on the general 'rules of interpretation', or the main 'guiding principles' established by some of these bodies, which steer the analysis of the selected human rights documents in chapters 3 and 4, and the categorisation of specific norms on VAW derived from them.

International human rights law put different types of obligations on State Parties. Several typologies have been developed in order to grasp the material scope of human rights obligations. In relation to their content, a first approach distinguishes between negative actions and positive actions. The first set - negative obligations - requires the State to abstain from committing any act that could violate human rights, while the second set - positive obligations - require a positive attitude from the State in order to realise those rights. For this reason, civil and political rights on one hand were connected to negative obligations, while on the other, economical, social and cultural rights were regarded as connected to positive obligations. The existence of positive obligations in relation to both sets of rights, however, is today widely supported. The protection of women from violence has been defined as a positive obligation on States, which must act with due diligence, i.e. to take all effective measures within their power to protect women who are at risk of being violently abused.[82]

The 'tripartite typology' has been developed in order to capture the extent of human rights obligations of the State as well. There is now broad consensus that human rights impose three types or levels of obligations on States parties. States should 'respect', 'protect' and 'fulfil' the rights contained in the documents they

[81] ILC Commentaries to the Articles on Responsibility of States, footnote 48.

[82] ECtHR, *Opuz v. Turkey*, (Application No. 33401/02), Judgment of 9 June 2009; Inter-American Court of Human Rights, Ser. C, No. 4, Judgment of 29 July 1988, 1989 28 ILM 291.

have committed to.[83] The duty 'to respect' requires State Parties to abstain from actions that prevent persons from exercising the rights, and refraining from breaching directly or indirectly the enjoyment of any human right. The duty 'to protect' requires State Parties to implement measures necessary to prevent other individuals or groups from violating these rights and take measures that prevent third parties from abusing rights. The duty 'to fulfil' requires that States facilitate, provide and promote rights, with a positive obligation to adopt appropriate legislative, administrative and other measures towards the full realisation of human rights. States Parties thus must proactively engage in activities that safeguard the exercise of the rights.

General Recommendation 28[84] focuses on the Nature and Scope of the Obligations of State Parties under the CEDAW, crucial for the understanding of the obligations of States in cases of gender based violence. It elaborates on the principles applicable to the interpretation of the *material or substantial obligations of State parties*, endorsing the tripartite division of obligations:

- Obligation to respect: States must abstain from performing, sponsoring or condoning any practice, policy or measure that violates the Convention;
- Obligation to protect: States must take steps to prevent, prohibit and punish violations of the Convention by third parties, including in the home and in the community, and to provide reparation to the victims of such violations;
- Obligation to fulfil: States must adopt temporary special measures that achieve sex non-discrimination and gender equality in practice.

Hence the 'positive obligations' of States, requiring 'actions', are the obligations to protect and fulfil. Applied to violence against women, these positive obligations require different types of legislative and policy actions, depending on the

[83]See: UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, available at: `http://www.refworld.org/docid/4538838c11.html` [accessed 5 December 2014], para. 15; General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10, available at: `http://www.refworld.org/docid/4538838c22.html` [accessed 5 December 2014], para 46. This typology was introduced by Henry Shue, *Basic Rights: Subsistence, Affluence and U.S. Foreign Policy* (Princeton University Press, 1996), 52, and then developed by A. Eide, UN Special Rapporteur for the Right to Food, The Right to Adequate Food as a Human Right: Final Report submitted by A. Eide, UN Doc E/CN.4/Sub.2/1987/23 (1987), also, Good Governance and the Rights of Minorities and Indigenous People, January 2000, 7.

[84]GR 28, footnote 58.

issue at stake.[85] Consequently, the obligation 'to protect' has been translated in relation to VAW as the obligations of States to 'prevent, punish and eradicate'[86]; 'prevent, investigate, punish'[87], often with the additional obligation to provide 'reparation'[88] or more generally as 'prevent, protect and punish', borrowed from the crime management policies, particularly from the field of trafficking of human beings.[89] 'Reparation' seems to fall within those categories of obligations, or appears as a separate category at times. In some recent texts and studies, 'provision of services' also appears as a separate category.[90]

The specific measures contained in the different normative texts analysed in this thesis, are categorised as 'preventive, protective and punitive'. In my view, although protection inherently includes punitive measures (criminalisation, investigation and punishment of VAW), I retain them as separate category for illustration purposes. I consider the provision of services for victims to fall within 'protection' as well, so I will not add any new category. Reparation, on the other hand, falls in my view as a consequence of the responsibility of the State after the breach of the obligation. Thus I will refer to the States obligations to prevent, protect and punish, and reparation will be referred to separately.

The obligations of the State can also be classified either as 'obligations of results' or 'obligations of means' in the attempt to grasp their content and also, their moment of realisation. Obligations of results require States to achieve a particular result, while obligations of means require to undertake a specific course of conduct, whether through act or omission, which represents a goal in itself. This would

[85]See also UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4, available at: http://www.refworld.org/docid/43f3067ae.html [accessed 5 December 2014]; para 27: Gender-based violence is a form of discrimination that inhibits the ability to enjoy rights and freedoms, including economic, social and cultural rights, on a basis of equality.

[86]Belem do Para Convention, footnote 55, article 7.

[87]DEVAW, footnote 10, article 4.

[88]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), available at: http://www.refworld.org/docid/453882a422.html, para. 9, and Istanbul Convention, footnote 56, article 5.

[89]See UN General Assembly, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2000, available at: http://www.refworld.org/docid/4720706c0.html [accessed 5 December 2014].

[90]See, for instance: European Commission - Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (2010), available at: http://ec.europa.eu/justice/funding/daphne3/daphne_feasibility_study_2010_en.pdf, [accessed 5 December 2014].

indicate that as long as States take steps towards the realisation of the rights, they comply with their legal obligation, regardless of *how* they do it. Yet, while the CEDAW Committee agrees in GR 28 that obligations of means give States 'a great deal of flexibility', they still have to justify the 'appropriateness' of the measures adopted.[91]

A similar classification yet focusing on the moment of implementation makes a distinction between obligations of 'immediate implementation', and those of 'progressive implementation". Regarding the latter:

> States undertake to take steps, individually and through international assistance and co- operation, especially economic and technical, to the maximum of available resources, with a view to achieving progressively the full realisation of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.[92]

Clearly, progressive realisation comes into the picture in order to accommodate the economic diversity and different availability of resources among States subscribing to the same human rights obligations. This leads to connect this type of implementation with economic, social and cultural rights given the need for their gradual implementation. However, Brems correctly points out, 'resource constraints inevitably lead States to always give priority to implementing civil and political rights over the realisation of economic, social and cultural rights. This result is undesirable and incompatible with the principle of the indivisibility of human rights'.[93] Thus, although gradually, States are obliged to indeed take steps towards realising such rights. The gradual and progressive approach is beneficial to addressing structural factors, including VAW. Consequently, the Belem do Para Convention distinguishes between the duties that States have to perform without delay (Article 7) and specific measures that States agree to undertake progressively (Article 8).

Recently, the notion of 'intersectionality' has also entered the group of guiding principles that are essential for State compliance, as introduced by the CEDAW Committee:

[91] GR 28, footnote 58, para. 23.

[92] UN General Assembly, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at: `http://www.refworld.org/docid/3ae6b36c0.html` [accessed 5 December 2014], article 2.

[93] E. Brems, 'Human Rights: Minimum and Maximum Perspectives', (2009) *Human Rights Law Review* 9:3, 365.

> Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may affect women belonging to such groups to a different degree or in different ways to men. States parties *must legally recognise* such intersecting forms of discrimination and their compounded negative impact on the women concerned and prohibit them. They also *need to adopt and pursue policies and programmes* designed to eliminate such occurrences, including, where appropriate, temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25[94]. (my italics)

From the guiding principles analysed here, this is the one that remains largely unexplored, so it is elaborated in detail in chapter 2, dedicated to intersectionality.

In sum, this section has clarified the basic and overarching parameters for determining the material scope of the obligations of the State in relation to VAW. The State needs to prevent violence from taking place and, if regardless of prevention efforts violence occurs, the State must provide protection to women and punish the perpetrators. If these basic obligations are not met, then reparation is due. Also, in order to determine the scope of obligations one must consider whether it refers to an obligation of means or results, and whether these obligations require immediate implementation, or their realisation can be achieved gradually. Also, States need to consider the compounded nature of the subordination of women in the implementation of programmes and policies.

1.5 The responsibility of the State for breaches of obligations on VAW

One crucial notion needs to be clarified here. Considering the international commitments of States as a continuum, we can distinguish two moments: the obligations of States, that is the primary obligation to which the State had committed, and the responsibility, that is the secondary obligation that arises when the primary obligation has not been fulfilled. The second moment of responsibility might

[94]GR 28, footnote 58, para. 18.

therefore never be 'triggered' if there is strict compliance with the primary obligation. As due diligence in relation to VAW stands today, it is not easy to squarely place it as part of either 'obligations' nor 'responsibilities' and this deserves specific clarification from a legal point of view. In this section, we focus on the 'secondary obligation' of the State, that is, the responsibility of States with relation to VAW.

There are two 'systems' of international responsibility. One, regulated by the Draft Articles on Responsibility of States for Internationally Wrongful Acts (DARSIWA)[95], applies to the responsibility of one State arising from the breach of an obligation owed to another State and it is commonly referred to as 'the international law of responsibility'. In the case of a breach of human rights obligations, however, the State becomes, first and foremost, responsible vis-a-vis the individual. This type of responsibility is regulated by the particular instrument establishing the obligations. This is also the case in relation to VAW, with responsibility being regulated by the applicable instruments.

Although, as discussed in this chapter, principles applicable to international law *generalis* not necessarily directly apply to the realm of human rights and have been modified in order to suit human rights better, many of those principles are often used or 'borrowed' by judges, specially at early development stages. Hence, there are some basic principles, originally derived from the law of responsibility, that require clarification for the analysis of the responsibility of the State for the breach of human rights obligations on VAW: the attribution of responsibility to the State and the consequences for the breach.

1.5.1 The attribution of responsibility to the State for the acts of private individuals

The traditional approach to the attribution of responsibility considers States accountable only for its own acts, or by the public acts performed by its organs or

[95]International Law Commission, Draft Articles on Responsibility of States for Internationally Wrongful Acts, November 2001, Supplement No. 10 (A/56/10), chp.IV.E.1.

agents. The acts of private agents or other non-State actors fall outside the scope of state responsibility.[96]

From the perspective of international *law generalis*, historically, the principle of due diligence arose in international law as a necessity to provide a reasoned justification for the attribution of responsibility (imputability) to the State for the acts of private individuals who are nationals of that State in relation to the wrongs committed against (nationals of) another State.[97] Several doctrines, all addressing inter-State responsibility, were elaborated to address this gap. Already in the 17th century, Grotius laid the foundation for the present concept of responsibility due to lack of due diligence, arguing that the State could become complicit in the crimes of individuals when knowing of a crime committed by a subject, fails to prevent it when it can and should do so and punish them.[98] Wolff put forward the *doctrine of attribution*[99], and later, Vattel adopted Wolf's doctrine of attribution and connected it with the failure to organise the manners and maxims of government appropriately.[100] So the inaction or deficient action of the State justified its responsibility for the acts of private individuals.

Oppenheim introduced a shift in this approach, arguing that State responsibility requires 'fault' in the form of intent or negligence, and creates the concept of 'vicarious liability' in replacement of the doctrine of Grotius. He introduces the notion of *culpa in vigilando*, relating to the failure to exercise disciplinary power in relation to State agents. Nevetherless, he restates the due diligence principle as requiring to prevent where possible, punish and compel to pay damages.[101] Hatscheck adds the notion of *culpa in eligendo* to the vicarious responsibility, making States responsible for the 'careless' choice of State agents.[102] Although

[96]DARSIWA, article 4: 1. Also, see: ILC Commentary, footnote 48. Regarding judicial practice on attribution of responsibility to the State, three cases are paramount: ICJ, *Nicaragua V. United States Of America* Merits, Judgment of 27 June 1986; ICTY, *Prosecutor v. Dusko Tadic*, IT-94-1-A, Judgment of 15 July 1999; ICJ, *Bosnia And Herzegovina v. Yugoslavia* (Genocide Case), Merits, Judgment of 26 February 2007.

[97]For a detailed historical account, see: J. Hessbruegge, 'The Historical development of the doctrines of attribution and due diligence in international law', (2004) *New York University Journal of Int'l Law*, vol. 36, 265-306.

[98]Ibid.

[99]C. Wolff, Jus Gentium Methodo Scientifica Pertractatum [argument on scientific methodology regarding the principles of law applicable to all people] (Joseph H. Drake trans., William S. Hein & Co. 1995) (1764), cited by Hessbruegge [2004], 288.

[100]Hessbruegge [2004], 291.

[101]L. Oppenheim, *International Law*, 184 and 154, cited by Hessbruegge [2004], 294.

[102]J. Hatschek, 'Volkerrecht: Als System Rechtlich Bedeutsamer Staatsakte' [Public International Law: as a system of legally relevant state acts] 386 (1923), cited by Hessbruegge [2004], 298.

initially in connection to the acts of State agents, *culpa in vigilando* and *in eligendo* bring the element of *fault* to the realm of responsibility.

The introduction of 'fault' (intent or negligence) into the analysis of imputability created tensions and difficulties, and was greatly criticised. Anzilotti brought a stop to that discussion by eliminating the element of fault. He explained:

> [It] is the inconduct of the State, that has omitted to prohibit these acts or to take measures necessary to prevent them, that the breach of international law is found: the wrongful act, from the point of view of international law, is, in such a case the omission of the State and not the positive act of individuals; and the State is thus obliged because of *its* act, but not in its quality as accomplice of individuals, as has often been said since Grotious.[103]

Since the adoption of the DARSIWA, the basic approach to the imputability of the State is that of 'objective responsibility'. There is no need to prove 'fault' of the State anymore. Yet, DARSIWA has not addressed the doctrine of due diligence because such inclusion would require reference to the substantive obligations of States rather than secondary rules of responsibility. Regardless of the lack of explicit mention of due diligence, it is considered that the act of individuals can 'catalyse' the responsibility of the State, as Argo had suggested. De Frouville considered that the root of this 'responsibility for catalysis' lies in the doctrine of due diligence and has two main obligations: to prevent the attacks and to punish.[104]

In the human rights context, where State responsibility arises primarily vis-a-vis the individual, while the State appears as directly responsible for its own acts, and those of its agents as a breach of the obligation to 'respect', the due diligence doctrine was 'transposed' in order to derive the positive obligation of the State 'to protect' individuals against the act of private persons. For instance, in *Velásquez Rodríguez*, the Inter-American court established:

> In principle, any violation of rights recognised by the Convention carried out by an act of public authority or by persons who use their position of authority is imputable to the State. However, this does not define all the circumstances in which

[103] D. Anzilotti, La responsabilité internationale des Etats à raison des dommages soufferts par des étrangers, A. Pedone, 1906, cited by Olivier de Frouville, 'Attribution of conduct to the State: Private Individuals' in the *The Law of State Responsibility*, Crawford et al, editors, 276.
[104] Frouville [2010].

> a State is obligated to prevent, investigate and punish human rights violations, nor all the cases in which the State might be found responsible for an infringement of those rights. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.[105]

Since at the time of this judgment, the discussions around 'vicarious responsibly' and 'objective responsibility' were not definitively settled by the DARSIWA yet, it can be expected that the Court felt the need to 'construct' or 'justify' the objective responsibility of the State since it was neither an established principle yet nor originally included in the American Convention of Human Rights. Arguably, if the purpose of elaborating on due diligence is to attribute the responsibility to the State for the acts of private individuals, since the explicit incorporation of 'objective responsibility' of the State in DARSIWA in 2001, there is no need for either intricate judicial interpretations, nor to include explicit reference to due diligence in new human rights treaties. Human rights could simply 'borrow' and modify the principle from the law of responsibility.

The attribution of responsibility of the State for the acts of private individuals has been constructed by other ways before. With no explicit reference to due diligence, in *Osman v. The United Kingdom*,[106] the ECtHR focused on determining the breach of the positive obligation of the State to protect the victim. The Court found that the States had to 'take appropriate steps' to safeguard the lives of those within its jurisdiction where the authorities 'knew or should have known' that the victim was at risk.[107] The content of positive obligations of human rights has been the matter of detailed elaboration by the Human Rights Committee,[108] the Committee on the Rights of the Child,[109] and the Committee on Economic, Social

[105] *Velásquez Rodríguez Case*, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights (IACrtHR), 29 July 1988., para 172.

[106] *Osman v. United Kingdom* (23452/94) [1998] ECHR 101 (28 October 1998).

[107] *Osman v. United Kingdom*, footnote 106, para. 115.

[108] UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13, available at: `http://www.refworld.org/docid/478b26ae2.html` [accessed 5 December 2014].

[109] UN Committee on the Rights of the Child (CRC), General comment no. 5 (2003), General measures of implementation of the Convention on the Rights of the Child, 27 November 2003,

and Cultural Rights[110] This suggests that the analysis of the Court, and most human rights committees manage to base the imputability of the State by defining what constitutes a 'breach' of the human rights obligations, which seems easier today than in 1989 when the decision was issued, since several 'guiding' typologies aiming at determining the content of the obligations have been elaborated, as disused in subsection 1.4.2.

Establishing State responsibility for private acts is crucial for women since the most widespread violence affecting women around the globe occurs at the hands of private actors, in the 'private' sphere, particularly in the home. The negative consequences of the distinction between public/private acts have been largely commented by feminist legal scholars during the 1990s.[111] Thus in cases where State responsibility for private acts was traditionally inapplicable, authors have tried to find ways to overcome this. Cook proposed a number of ways in which the scope of the traditional rules of State responsibility could be expanded. Cook's methodology involves describing the situation of women in terms of international human rights standards, in particular evidence of systemic discrimination, and then identifying the State's duties of prevention and redress both in customary and conventional international law.

Similar to Cook's suggestion, in international human rights law, the attribution of State responsibility for the acts of private actors in relation to VAW started to develop in relation to the States' systematic failure to investigate and prosecute acts committed either by para-state agents or by private actors.[112] Making use of the 'due diligence' principle, the CEDAW Committee established in GR 19 that the State can be held responsible not only for the (public) acts of public servants, but that it also has a 'due diligence obligation to prevent discrimination by private actors.' This understanding was put to the test in *Sahide Goecke v. Austria* where the CEDAW Committee confirmed that '[u]nder general international law

CRC/GC/2003/5, available at: `http://www.refworld.org/docid/4538834f11.html` [accessed 5 December 2014].

[110]UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4, available at: `http://www.refworld.org/docid/4538838d0.html` [accessed 5 December 2014].

[111]Among other, see: C. Chinkin, 'A critique of the Public/Private Dimension', (1999)*EJIL*, 10:2, 387-395.

[112]D. Q. Thomas and M. E. Beasley, 'Domestic Violence as a Human Rights Issue', (1993)*Human Rights Quarterly*, 15, 36-62, 41; R. McCorquodale, 'Impact on State Responsibility', in *The impact of Human Rights Law on General International Law*, Kamminga and Scheining, eds. (Oxford University Press, 2009).

and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.'[113]

Also, the ECtHR has held the responsibility of the States for the acts of private individuals in relation to domestic violence in *Opuz vs. Turkey.* The Court held that States have a positive obligation to take preventive measures to protect an individual from the criminal acts of another person where they 'knew or ought to have known' of a 'real and immediate risk to the life of an identified individual(s) from the criminal acts of a third party and they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.' The State has a positive obligation to act with due diligence for the protection of women from violence, i.e. to take effective measures within its power to protect women at risk of being violently abused by an intimate partner.[114]

In cases were the perpetrator is unknown, or rather, it is unknown whether it is a state agent or a private individual, the IACtHR adopted a somewhat different approach, at least in *Campo Algodonero* case.[115] The Court considered that State responsibility would arise as a result of the breach of the obligation to duly investigate cases of VAW *ex-officio.* If those acts are not dully investigated, then it could be considered that the perpetrators are to some extent 'assisted by the public authorities.'[116] In *Campo Algodonero*, what triggers the attribution of responsibility to the State is the view of public officials as aiding with or abetting the violence. In any case, it is possible to argue that the attribution of responsibility has then been interpreted in a progressive way in order to include violence against women regardless of the sphere in which it takes place.

Hence, today, the proposition of international law in relation to imputability is that of objective responsibility, while in the realm of human rights and violence against women, the attribution of responsibility for the acts of private actors appears groused in the principle of due diligence. The use of due diligence in the realm of VAW, however, seems to be changing and is no longer used only in order to determine the imputability of the State, and will be discussed in detail further below.

[113]GR 19, para 9 and *Sahide Goecke v. Austria*, para 12.1.1.
[114]See: *A v. UK* (1998), *Belaqua v. Bulgaria*, *Opuz v. Turkey*, footnote 67.
[115]IACtHR, *González et al. (Cotton Field) vs. Mexico*, Judgment of November 16, 2009, (Preliminary Objection, Merits, Reparations, and Costs).
[116]*González et al*, footnote 115, para 291.

1.5.2 Reparation

The second general principle that requires clarification is the provision of reparation as a consequence of the breach of an international obligation. This is a clear principle of interstate responsibility linked to the commission of an internationally wrongful act.[117] However, the reparation owed by States to individuals as a result of human rights violations is not so clearly established. There are not many international human rights instruments which explicitly recognise that responsibility for human rights violations entail liability to pay damages or, more generally, to offer reparation.

Nevertheless, in international law the right of individuals to reparation for the violation of their human rights has been increasingly recognised. This is particularly clear in relation to gross violations, where the Van Boven/Bassiouni Principles apply,[118] but also, the duty to provide reparation in cases of VAW has been incorporated in most of the dedicated texts under review in this thesis. Reparations in relation to the violation of human rights entail the restitution to the original situation, compensation for any economically assessable damage, rehabilitation (including medical and psychological care and social services), satisfaction (including the cessation of violations, investigation of the facts and disclosure of the truth, public apology and sanctions), and guarantees of non-repetition.[119]

In addition, Rubio-Marín and de Greiff considered that 'there is now a growing sense of the necessity of 'engendering' reparations',[120] as a number of emerging publications on the topic confirm. Rubio-Marín argues that reparations represent a singular opportunity for transformation rather than mere restitution to the original situation.[121] This transformation also relates to economic realities beyond material harm, as pointed out by Bernstein, who recalls that in many regimes,

[117]The basic principle of reparation as an automatic consequence of the commission of an internationally wrongful act was laid down by the Permanent Court of International Justice in the *Factory at Chorzow* case (1928).

[118]UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law: resolution adopted by the General Assembly, 21 March 2006, A/RES/60/147 (here after Van Boven/Bassiouni Principles).

[119]Van Boven/Bassiouni Principles, footnote 118, articles 20-23.

[120]Ruth Rubio-Marín and Pablo de Greiff, 'Women and Reparations', (2007) *International Journal of Transitional Justice* 1. Most of these authors focus on reparation programmes in relation to violations to international humanitarian law.

[121]Ruth Rubio-Marín, The Gender of Reparations in Transitional Societies, in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* ed. Ruth Rubio-Marín. (Cambridge University Press, 2009).

the patriarchal character of the systems limited women's access to property and capital, so expanding the scope of traditional economic compensation to create further economic and social empowerment of women seems needed.[122] Symbolic forms of reparation, such as apology and public remembrance can help in exposing underlying gender inequality and expose its social and economic scope. Yet, Rubio-Marín and de Greiff point out that it is not yet clear what exactly the task of bringing gender justice to the discussion of reparations entails.[123]

The necessity of 'engendering' reparations is also applicable to judicial reparations procedures, which typically operate on a case-by-case basis, such as the ones dealt with in this thesis. The proposition of a gendered approach to reparations often relies on the idea that women's experiences of violence are inherently different from those of men, but also, on the idea that violence against women is the result of 'unequal relations of power' and structural gendered discrimination. In this sense, reparations need to make use of their transformative potential. The goal should never be limited to simply provide material payments or to compensate for loss but also to 'upset the conditions of targeted violence'. This approach has been supported by the Inter-American Court of Human Rights (IACtHR). In the *Campo Algodonero* case,[124] the socio-structural context in relation to gender discrimination influenced the determination of the obligation to integral reparation of the victims:

> [...] bearing in mind the context of structural discrimination in which the facts of this case occurred, [...], the reparations must be designed to change this situation, so that their effect is not only of restitution, but also of rectification.[125]

With the aim of rectification of the unjust pre-existing situation, the Court called the State to take a comprehensive prevention policy as connected to the obligation of reparation. The determination of the content of reparations in cases of violence against women thus, although clearly guided by texts such as the basic Principles of Van Boven/Bassiouni, seems to require a 'gendered reading', aiming not only at reparation, compensation, rehabilitation, satisfaction and guarantees of non-repetition, but also, at rectification of unjust situations.

[122] Anita Bernstein, 'Tort Theory, Microfinance, and Gender Equality Convergent in Pecuniary Reparations', in *The Gender of Reparations: Unsettling Sexual Hierarchies while Redressing Human Rights Violations* ed. Ruth Rubio-Marín. (Cambridge University Press, 2009).
[123] Rubio-Marín and de Greiff [2007].
[124] González et al, footnote 115.
[125] Ibid, para. 450.

1.6 The due diligence principle

As commented in the previous section, the principle of due diligence is perhaps the one that truly differs when looking at its role in general international law and its current role in relation to VAW particularly. Once strictly applicable in the realm of State responsibility for the determination of the imputability of the State for the acts of private actors, it has taken a hybrid function in the field of VAW.

In recent years, it has been suggested that the due diligence principle in the field of VAW can contribute to overcome the shortcomings of human rights in relation to VAW and women's inequality and also provide a 'renewed interpretation of the obligations to prevent, protect, prosecute and provide compensation and map out the parameters of responsibility for State and non-State actors alike'.[126] Furthermore, some scholars have put their efforts in clarifying their content.[127] Although positive from an advocacy perspective, from a legal perspective such endeavour seems to be based on some misunderstandings about the specific legal role of the principle.

As analysed in the previous section, the original use of due diligence in international law, and also within human rights more generally, was to establish the imputability of the State, clearly in the realm of the responsibility of the State. In the field of VAW, however, due diligence has been explicitly introduced, sometimes connected to imputability, sometimes to identify the breach of the obligation and sometimes to do both. For instance, DEVAW states that they must 'exercise' due diligence to prevent, investigate and punish, whether those acts are perpetrated by the State or by private persons'.[128] Hence, due diligence can be used to justify imputability, yet it will boil down to identifying the breach of the obligation. This 'due diligence' principle seeks to provide the adjudicating bodies with the possibility to use discretion to 'translate' the positive obligations of the State in the concrete case.

CEDAW General Recommendation 19 states that States may be responsible for private acts if they fail to 'act' with due diligence to prevent violations of rights or

[126]See: Report of the Special Rapporteur on violence against women, its causes and consequences, E/CN.4/2006/61,20 January 2006, 23.
[127]See: C. Benninger-Budel *Due Diligence and Its Application to Protect Women from Violence*, (Martinus Nijhoff Publishers, 2008); S. Farrior, 'The Due Diligence Standard and Violence Against Women', *Interights Bulletin* 14:4 (2004).
[128]DEVAW, footnote 10, article 4 (c).

to investigate and punish acts of violence, and for providing compensation.[129] Similarly, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women clearly addresses violence occurring in the private sphere, and consequently committed by private actors, at the core of the obligations of the States. It then requires States to 'apply due diligence to prevent, investigate and impose penalties for violence against women',[130] without linking it to the acts of private individuals. Thus, these two documents clearly move the due diligence principle from the 'attribution' element to the 'breach of the obligation', but still place it in the realm of responsibility.

Arguably, considering the time of adoption of these documents, that is from 1992 to 1994, there was still a need for taking some precautions to make sure the acts of private actors would trigger the responsibility of the State, and that 'positive' obligations of the State were understood broadly enough. Today, both notions are firmly rooted in human rights law, explicitly included and elaborated in documents and jurisprudence.[131] Nevertheless, there have been many recent calls to 'elaborate on the content' of the principle of due diligence, moving it from the realm of 'responsibility' to that of the 'obligations' of States.[132] In my view, this does not necessarily reinforce the achievements made, it might actually threaten them.

For instance, the UN SRVAW has suggested that 'there is a need to create a framework for discussing the responsibility of States to act with due diligence, by separating the due diligence standard into two categories: individual due diligence [obligations of the Sate vis-a-vis the individuals] and systemic due diligence [a holistic and sustained model of prevention, protection, punishment and reparations].'[133] There seems to be a misunderstanding between 'obligations' and 'responsibility', using them even interchangeably. Also, although referring to DARSIWA and the *Velásquez Rodríguez case*, the UNSRVAW report does not clarify that DARSIWA

[129]See: GR 19 footnote 88, para 9.

[130]Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, Article 7(b).

[131]See supra, the General Comments in footnote 108, footnote 109, footnote 110 and subsection 1.4.2.

[132]See: Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk, E/CN.4/2006/61, 20 January 2006; Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, A/HRC/23/49, 14 May 2013. The Due Diligence Framework, developed by the Due Diligence Project was the topic of the UN Side Event hosted by the Governments of the Netherlands and France in conjunction with the 68th session of the UN General Assembly on 24 October 2013.

[133]Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo,A/HRC/23/49, 14 May 2013, para 70 and 71.

applies to inter-state responsibility only, or that the Inter-American Court issued that judgment before objective responsibility was an established legal principle. But most importantly, it seems to forget what the obligations of the States Parties to CEDAW *already* entail. A similar report was issued in 2006 by the subsequent UN SRVAW where many of the 'measures' she considered to fall under the principle of due diligence in fact were already 'norms' clearly rooted in the GR 19, DEVAW and Belém do Pará and that State Parties have a duty to comply with them. In combination with subsection 1.4.2 of this chapter, chapters 3 and 4 will explore those norms.

The principle of due diligence can be, in my eyes, of much use for the protection of human rights and VAW, by allowing discretion of interpretation by a judicial or quasi judicial body in areas where the existing normative framework present gaps. Bearing in mind the current development of international law and international affairs, one such gap may be the area of responsibility of non-State actors for human rights violations, such as corporations. Considering VAW specifically, it may be useful for assessing promising practices' contribution to the implementation of obligations but without necessarily 'fixating them', leaving room for new and better emerging measures. In this sense, due diligence might in fact be instrumental in the adoption and assessment of an intersectional approach to VAW in a flexible and dynamic manner. Yet, as valuable as advocacy efforts are in this respect, trying to 'determine' the content of due diligence by referring to measures which are already relatively well established as norms, would bring discretion in aspects that were already clarified. Moreover, if the process of 'negotiation' of human rights is once again triggered over the same topics, the rise of contestation and counter-norms is again possible, like the Spiral Model suggests. In other words, established norms may be jeopardised. For this reason, this dissertation will pinpoint the existing norms of VAW, and will encourage the use of principles of interpretation, due diligence included, only to fill gaps in the existing framework.

1.7 Chapter Conclusion

In this chapter, the basic notions underlying the configuration of the normative framework on VAW of this thesis have been established. In the review, some of the long standing legal notions and principles have shown their limitations in dealing with VAW. For instance, I have discussed the limitations of the traditional State

centric approach to VAW given the need to involve a 'multi sectorial response' to the problem, engaging with non-State actors in the process of elaboration of human rights norms. This dynamics in the norm-making process has direct consequences on the 'form' of norms being adopted in the field of VAW, that is, 'hard' and also 'soft' law.

Human rights norms, especially those emerging from the interaction between State and non-State actors can be 'dressed' as soft-law, but still remain normative, compelling on States. Furthermore, these soft-law norms are not mere laws in a preliminary form, they are valid norms already in their non-legal form. As long as their normative value is not contended, keeping the distinction between soft/hard law is in fact beneficial because soft-law norms reach further than the State, toward non-State actors, whose commitment is crucial for the prevention of and protection from violence against women. VAW calls for a multi-dimensional response in order to tackle the problem. Having said that, I must restate that the State remains the one actor to be formally obliged to comply with, and responsible for the breach of, its obligations.

In order to select the sources of norms to be examined in chapters 3 and 4, I have analysed the traditional sources of international law in relation to their ability to address VAW. I argued that Conventions alone cannot be considered as the exclusive sources of human rights norms on VAW. Instead, I include other 'directly consensual' sources, such as declarations and General Assembly resolutions, and 'indirectly consensual', such as general recommendations of treaty bodies, even if these are 'soft-law'. These will thus be the main sources of law used in this thesis, constitutive of the human rights framework on VAW.

Given the considerations of soft-law documents as 'law' and crucial for achieving compliance, identifying potential sources of customary law is not of interest for this thesis. Nevertheless, I recognise that although the scope of what can considered to be law has been broaden in relation to human rights on VAW, there are variations among the normative character of the documents used. These different degrees of normative character depends on the the level of agreement reached in the adoption, and also, on the language used. For this reason, general principles of law, in particular, the principle of reparation, *pacta sunt servanda* and good faith, will be used only in order to reinforce the normative value of other analysed human rights documents when needed.

Furthermore, I have examined the guiding principles for determining the material scope of the obligations of States in relation to human rights and violence against women in particular. States are confronted with negative and positive obligations. The positive human rights obligations of States in relation to VAW require them to prevent the violence, protect women from violence, including by punishing perpetrators, and provide reparation. In addition, among these guiding principles, intersectionality has emerged as one of the aspects leading to compliance with norms least explored and explained from a legal perspective. I have also analysed principles guiding the responsibility of States for violating norms on VAW, and specially pointed to the 'shifting' aspect of due diligence.

States are responsible for the breach of their human rights obligations in relation to VAW. Furthermore, their responsibility is not limited to the acts of public actors, but also covers the acts of private individuals when States fail to prevent, investigate and punish the violence. States must provide reparation as a consequence of the breach, which includes restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Furthermore, taking into consideration that violence against women is the result of unequal relations of power and structural gendered discrimination, reparations need to aim at 'transformation' and 'rectification' of the unjust pre-existing situation.

Finally, I have discussed the use of the principle of due diligence in relation to VAW. I argued that due diligence has shifted from the field of responsibility of the State, to the field of the obligations of States, bringing uncertainty to an already established body of norms, and consequently, jeopardising some long fought achievements. I suggest that instead, the principle of due diligence, now that State obligations in relation to VAW have been clearly established and that States are responsible for violations by both public and private actors, may contribute to the identification of promising practices, allowing for flexibility. More importantly, it may be instrumental for the clarification of what 'an intersectional approach' to VAW entails.

Chapter 2

Intersectionality and Violence Against Women

> The only real voyage of discovery consists not in seeking new landscapes, but in having new eyes.
>
> Marcel Proust

2.1 Introduction

This chapter aims at clarifying the main theoretical notions underlying intersectionality and highlighting the central aspects that will guide the analysis of the human rights documents constitutive of the normative framework on VAW outlined in chapters 3 and 4. In doing so, I provide a theoretical analysis of the intersectional approach (technical intersectionality). I begin with a brief overview of the origins of the perspective. I then examine the theoretical concepts underlying intersectionality and the limitations of the intersectional approach. Subsequently, I propose a procedure for the identification of the intersectional approach in normative texts, which I will apply in relation to human rights documents on Violence Against Women (VAW) in chapters 3 and 4 (normative intersectionality).

2.2 Emergence of intersectionality

In the early '90s different notions about gender were being discussed in different fields of the social sciences. The influence of different dimensions of the social structure on the construction of gender as recognised today was pointed out at that time, primarily by black feminists, women from the global south and lesbians. They argued, first of all, that women should not be regarded as a homogeneous group, all having similar experiences and needs regardless of their race, class, sexual orientation or any other social category of distinction.[1] Emphasising on the differences among women contributed, first of all, to a more nuanced understanding of gender, rendering essentialist notions of women as flawed.

A second important notion emerging at that time was that inequality based on gender would likely be linked to other forms of inequality, such as inequality based on race, class, national origin, sexual orientation, and so on. Thinking in terms of multiple systems of oppression connected to each other became an appealing approach to scholars focusing on the treatment of discrimination, and particularly to feminist scholars. This perception of the full complexity of inequality resulting from multiple categories of distinction became a challenge to the traditional view on discrimination as connected to only one category of distinction or system of oppression at a time. Satterthwaite pointed out that in the international arena, existing instruments and bodies had been designed to address single-variable subordination, that is, one system to address racial discrimination (CERD), one to address gender (CEDAW), and so on.[2] The CERD Expert Committee also referred to the limitations of such essentialist approach with regard to discrimination:

[1]For a taste on the elaborations of racial difference and violence see: bell hooks, 'Feminist Movement to End Violence', in *Feminist Theory: From Margin To Center* 117-31 (South End Press, 1984); V. Kanuha, 'Domestic violence, racism and the battered women's movement in the United States', in *Future interventions with battered women and their families* J. L. Edelson and Z. C. Eisikovits (eds.), (SAGE, 1996), 34-50 ; B. Richie, 'A Black feminist reflection on the anti-violence movement', (2000)*Signs* 25, 1133-1137 ; J. Ristock, 'No more secrets: Violence in lesbian relationship' (Routledge, 2002); A. Russo, 'If not now, when? Contemporary feminist movements to end violence against women', in *Taking back our lives: A call to action for the feminist movement* (Routledge, 2001). Also, for a description of diverse feminist views regarding male violence against women and its relationship to women's position in society, see: S. F. Goldfarb, 'Violence against Women and the Persistence of Privacy', (2000)*Ohio State Law Journal* 61:1-87.

[2]M. Satterthwaite, 'Crossing borders, claiming rights: using human rights law to empower women migrant workers', (2005) *Yale Human Rights and Development Law Journal* 8,10.

> The consequences of the interaction of multiple forms of subordination, including gender and race discrimination, are often considered to be separate and mutually exclusive forms of discrimination. As a result, victims of multiple forms of discrimination may not have access to effective remedies for redress. Moreover, interventions designed to address racial or gender discrimination may not effectively address the situation of those affected by multiple forms of discrimination.

That idea of multiple discrimination, suggesting that particular consequences arise when discrimination is the result of a combination of different grounds of subordination, has entered human rights documents and has been applied to the analysis of law.[3] It revealed how insufficient attention was being paid by simplistic understandings of discrimination to the 'complex situated subject',[4] yielding flawed protection policies.[5] The concepts of 'multiple discrimination' or 'multiple barriers' deployed in several international documents point to the beginning in the process of elaborating a truly complex understanding of oppression.[6]

Among the various elaborations on the diversity of women and the complexity of inequality, Crenshaw[7] coined the term 'intersectionality' referring to the intersecting inequality that African American women suffered based on the convergence of their race and gender. The layered nature of oppression and the complex inequality resulting from it was effectively captured by the intersectional approach, which introduced different layers of analysis and by doing so, it departed from traditional simplistic understandings of inequality. Crenshaw's work was widely supported and acclaimed by black feminists, and gradually, 'intersectionality' would later gain recognition among feminists in general. As commented in the Introduction

[3]See: L. Crooms, 'Indivisible Rights and Intersectional Identities or, What Do Women's Human Rights Have To Do With The Race Convention?', (1997) *Howard Law Journal* 40: 619-640; J. Bond 'International Intersectionality: A Theoretical And Pragmatical Exploration Of Women's International Human Rights Violations', (2003) *Emory Law Journal*, 52:71-186; Satterthwaite [2005], footnote 2; A. Vakulenko, "Islamic Headscarves' and the European Convention on Human Rights: an intersectional perspective', (2007) *Social Legal Studies*, 16:183-199.

[4]E. Grabham, D. Cooper, J. Krishnadas, and D. Herman, (eds), *Intersectionality and Beyond: Law, power and the politics of location* (Routledge-Cavendish, 2009), Introduction.

[5]See for example, Ontario Human Rights Commission, 'An intersectional approach to discrimination: Addressing multiple grounds in human rights claims', Discussion paper, (2001).

[6]See: United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995; Trafficking in women and girls: resolution 59/166 adopted by the General Assembly [on the report of the Third Committee], A/59/496; UN GA 63/156. Trafficking in women and girls; Human Rights Council, Res. 7/24, Elimination of violence against women; UN Committee on the Elimination of Racial Discrimination (CERD), CERD General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002.

[7]K. W. Crenshaw 'Demarginalizing the intersection of race and sex: a black feminist critique of anti-discrimination doctrine, feminist theory and antiracist politics', (1989) *U. Chi Legal F.*, 139-67.

to this book, several international documents refer to intersectionality or the intersection of inequalities, some of them in connection to the gender-based aspects of inequality and discrimination in particular.

In spite of explicit references to intersectionality, what the meaning attached to intersectionality in human rights documents is, or the methodological implications and practical consequences of adopting an intersectional perspective as part of the State's obligations to prevent and eliminate discrimination and/or violence against women are not immediately evident. Hence, it becomes important to explore from the perspective of social sciences what an intersectional approach to VAW entails, in order to discover its presence within the human rights documents examined in the next chapters.

Having said this, it should be noted that in the social-scientific realm itself there are still many questions about what the intersectional approach entails and its role in research. In addition, there has been at times a tendency within literature to 'reify' the concept.[8] For instance, intersectionality has been labeled as a 'theory',[9] a 'feminist paradigm'[10] and a 'research paradigm'.[11] So, what is meant by 'intersectionality'? What main notions, what assumptions, lie behind this approach?

Choo and Ferree regard intersectionality as 'a theoretical approach with non-specific nature, open-ended concept being filled with multiple meanings.'[12] This flexibility may be taken as indetermination, and might explain why intersectionality is often considered a 'buzzword' of uncertain meaning, as Davis points out:

> 'Intersectionality' refers to the interaction between gender, race, and other social categories of distinction in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power [...] Some suggest that intersectionality is a theory, others regard it as a concept or heuristic device, and still others see it as a reading strategy for doing feminist analysis. Controversies have emerged about whether intersectionality

[8] By 'reification' I mean to take an abstract and indefinite *notion* and forcibly make into a more concrete and definitive *entity*.

[9] S. Shields 'Gender: An intersectionality perspective', (2008) *Sex Roles*, 59:301-311.

[10] J. Nash,'Re-thinking intersectionality', (2008) *Feminist Review*, 89.

[11] A.-M. Hancock 'When multiplication doesn't equal quick addition: Examining intersectionality as a research paradigm', (2007) *Perspectives on Politics*, 5(1):63-79.

[12] H.Y. Choo and M. M. Ferree, 'Practicing intersectionality in sociological research: A critical analysis of inclusions, interactions and institutions in the study of inequalities', (2010) *Sociological Theory*, 28(2):129-149 .

> should be conceptualized as a crossroad (Crenshaw, 1991), as 'axes' of difference (Yuval-Davis, 2006) or as a dynamic process (Staunaes, 2003).[13]

In relation to the use of intersectionality within research, many authors emphasise its use as an analytical framework[14] or an 'interpretative methodology',[15] while others regard it as a useful discursive tactic.[16] Yet today, intersectionality is being regarded at the same time as both a theoretical and an analytical approach.[17] For instance, Hancock[18] argues that:

> 'intersectionality' refers to both a normative theoretical argument *and* an approach to conduct empirical research that emphasizes the interaction of social categories of distinction.

Similar to Hancock, this thesis considers intersectionality as an 'explicit interdisciplinary approach' to the study of race, gender, class and other social categories of distinction,[19] yet applied to the interpretation of human rights norms. Similarly to Satterthwaite, this book takes intersectionality as a tool for interpreting human rights, although not per se a methodology. The different theoretical notions underlying the approach and the different strands that can be identified within intersectionality are analysed in the section below. The focus of the next sections lie on the theoretical aspects of intersectionality.

2.3 Basic theoretical notions underlying intersectionality

Based on existing literature, this subsection provides an overview of the basic theoretical notions underpinning intersectionality.[20] I recognise some basic theoretical notions which, in order to simplify matters, I have divided into an overarching

[13]K. Davis, 'Intersectionality as buzzword: A sociology of science perspective on what makes a feminist theory successful', (2008) *Feminist Theory*, 9(67).

[14]Nash [2008], footnote 10; Shields [2008], footnote 9.

[15] Satterthwaite [2005], 3.

[16]Crenshaw, I. M. Young, Juval-Davis, M. M. Ferree.

[17]Hancock, sees it as 'a normative theoretical argument', 'an approach to conducing empirical research', 'a research paradigm', 'a body of normative theory and empirical research'; while Ferree characterises it as 'theoretical and methodological approach' and 'method of analysis.'

[18]Hancock [2007], footnote 11.

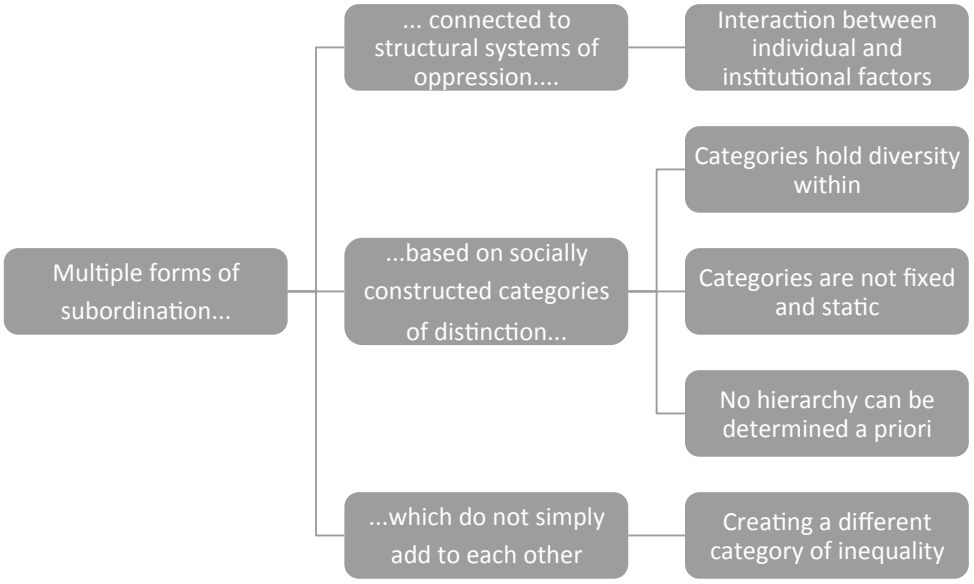
[19]Hancock [2007].

[20]I draw inspiration from Hancock's distinction between 'multiple' and 'intersectional' approaches to the study of race, gender, class and other social categories of distinction, footnote 11.

notion, divided into three main underlying theoretical points, which in turn, are often considered connected to some basic tenets. This proposed de-construction of the theoretical notions of intersectionality is illustrated by Figure 2.1.

The overarching notion guiding intersectionality is that individuals (and groups) are affected by multiple forms of subordination and not by one form of discrimination at a time. For instance, while women face gender discrimination, some women may face another form of discrimination, for instance, based on their race. This basic notion thus has broaden the scope of inequality affecting women to include other social categories beside gender, leading to the inclusion of women of colour within the mainstream white feminist discourse.

FIGURE 2.1: Main theoretical notions of intersectionality



The *structural (social and institutional) construction of systems of oppression* is the first main underlying notion of intersectionality. Such subordination affecting individuals or groups is *based on categories of distinction* (second notion), or in other words, categories used to distinguished among groups and individuals, and these categories are socially constructed. These social social categories of distinction are created by the dynamic interaction between the individual and structural factors (sub-tenet 1). The individual level becomes integrated with the institutional. Yet, authors applying intersectionality do not concentrate only on categories of subordination but on the *processes* which create those categories and the *systems* of subordination.

Regarding the social categories of distinction specifically, intersectionality highlights that each category holds diversity within (sub-tenet 2). This is probably one of the earliest and least controverted notion among intersectional scholars and stems from the basic postulate that women do not constitute a homogeneous group. It supposes that some values which are commonly taken as fully representative of a given social category of distinction refer in fact to the most powerful individuals belonging to such category, and as such, become mainstreamed, while there might be contrasting values which are upheld by marginalised groups, and these values are repressed or silenced. This brings tensions within each social category of distinction, making it impossible to refer to any social category of distinction as 'homogeneous'. To illustrate this point let us recall how religion as a social category of distinction, regardless of which one, needs always to distinguish between those members with strong convictions and those who prefer a more secular style of life. Thus, echoing the call to differentiate among women, this idea of 'difference within category' has helped to show how it is not realistic to refer to one 'culture', or 'ethnicity', or any other as a uniform category where all members uphold the same views and values.[21]

In addition, intersectionality points out that categories of distinction are not static or permanent, but are changing over time (sub-tenet 3). To illustrate this point in relation to gender, one could think about how 'sexual orientation' was often closely connected to what 'being a man' or 'being a woman' meant, while today these two aspects are recognised more and more as separate. Regarding race, one could point out that different parameters have been used to determine racial belongings (like blood measures, certain physical characteristics, line of descent, etc.) which are normally decided at the institutional level and are modified, complemented or even replaced by new ones from time to time. The same can be said about any other social category of distinction.

The final notion connected to the categories of distinction is that there is not necessarily a hierarchical relation among multiple social categories of distinction. In other words, gender inequality is not predominant over inequality based on race, or class, or whatever other category of distinctions that appears as relevant to the specific case, and vice-versa. The intersectional approach sees the relationship between the social categories of distinction as undetermined a priori, and on the

[21] Beyond the intersectional approach itself, this idea has been usefully deployed as a counter-argument to simplistic theories on identity politics which promote a unitary approach to social categories of distinction and, as such, fuel political (and often violent) clashes.

contrary, such relation must be 'discovered' through empirical research (sub-tenet 4).

The last theoretical basic notion distinguishing the intersectional approach from other approaches to discrimination and inequality is that *multiple categories of distinction do not simply 'add' to each other* to create a multiplied effect, rather a new and different position (or category) of subordination is created. For instance, women of colour are not 'doubly oppressed' based on a race-gender addition, they experience a new and different form of subordination. People in this position of intersecting inequality are often rendered unprotected by policies and laws addressing each single category of subordination, even if they are entitled to both.

These theoretical aspects are addressed differently by different authors, who sometimes choose to put their emphasis on one or another aspect. In the next subsection, I will group and examine these different perspectives. The treatment of the different categories (the relation between them, the diversity within category, etc), show much variation among authorship.

2.4 Different strands within intersectionality research

In spite of the great variety of authors and research projects using intersectionality, few classifications have been proposed. For instance, Naples distinguished three main approaches: individual approach, relational approach and a social structural stance to intersectionality.[22] McCall distinguishes intersectionality authors according to how they use categories, that is, authors taking an 'anti-categorical', 'intra-categorical' or 'inter-categorical' approach. Also considering how categories are addressed, 'additive intersectionality' or 'transversal intersectionality'.[23] Choo and Ferree's see three styles of looking at intersectionality: inclusion-centered', 'process-centered' and 'systemic'.[24] Works and authors on intersectionality are classified in this section slightly differently: those focusing on the one hand on 'groups' (often referring to 'locations'), and on the other, those focusing on the

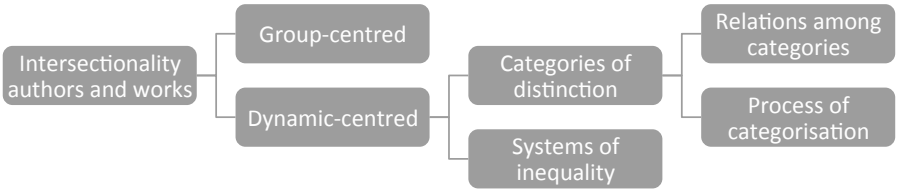
[22]N. A. Naples, 'Teaching Intersectionality Intersectionally', (2009) *International Feminist Journal of Politics*, 11(4): 566577, 568, 569 .

[23]S. V. Knudsen, 'Intersectionality: a theoretical inspiration in the analysis of minority cultures and identities in textbooks', in *Caught in the Web or Lost in the Textbook* 53: 61- 76 (2006), 63.

[24]Choo and Ferree [2010], footnote 12.

dynamic aspects of inequality (focusing on the categories or the systems of inequality). In Figure 2.2 this initial classification can be seen.

FIGURE 2.2: Approaches to Intersectionality

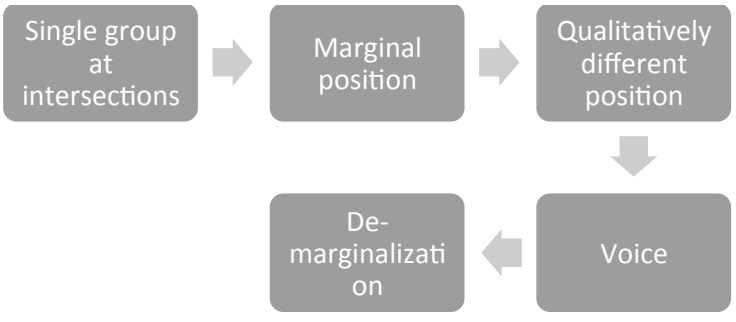


I analyse the 'group-centred' in the section immediately below, followed by the dynamic-centred.

2.4.1 Group-centred

The group centred approach revolves around three elements: the attention to marginal groups located at the intersection of two or more axis of inequality; special and qualitatively different needs arising from that intersectional position and the need to provide those groups with the opportunity to voice their reality, distress and desires. These three main postulates, illustrated in Figure 2.3, are found in Crenshaw's work, who is representative of authors focusing on 'intersectional groups'.[25]

FIGURE 2.3: Group-centred basic notions



Crenshaw's work became paramount for black feminists and for anybody embarking on intersectional research ever since. She focuses on the multiple (double)

[25]Crenshaw [1989], footnote 7; focusing particularly on violence against women of colour, see: 'Mapping The Margins: Intersectionality, Identity Politics, And Violence Against Women of Color', (1990-1991)*Stanford Law Review*, 43:1241.

oppression suffered by African American women in relation to their gender and race. She highlights the fact that women of colour are situated within two subordinated groups with conflicting political interests.[26] She argues that antiracist politics will not question patriarchy, and feminists politics will often reinforce race subordination. Thus, the location occupied by African American women underlies the 'internal division' of the categories of women and blacks, but it is not regarded as a new category in itself, and as such prone to present internal differences. These women find themselves at 'a traffic intersection', in a very specific location where the road of sexism and racism intersect. This metaphor became a powerful device for the dissemination of the notion of intersecting oppression.

In addition, she argued that intersectional discrimination created 'qualitatively different experiences and needs' and she considered that the intersectional experience of African American women is more than 'adding' the experiences of racism and sexism, since race and sex normally become grounded in experiences that actually represent only a subset of a much more complex situation. Crenshaw thus considered that additive analysis leads to oversimplification.

Furthermore, she argues that intersectional groups are marginalised and overlooked. Policies often address the needs resulting from inequality affecting one group, for example, women, in the belief that these will benefit the totality of the groups, namely, *all* women. Yet, policies often address 'mainstream' needs only, those of the most visible representatives. As a consequence, the needs of groups at the intersections, in this case Black American women, are ignored and left out. Consequently, she intended to include them and 'de-marginalise' their unique experiences by giving them 'voice.'[27]

In 'Mapping the margins', Crenshaw continues her elaboration of intersectionality by exploring the various ways in which race and gender intersect in shaping structural, political, and representational aspects of violence against women of colour.[28] She provides useful illustrations of the 'special needs' discussed above. She describes how in the cases of battered women seeking protection, intersecting burdens create different needs and therefore intervention strategies based on the

[26]Crenshaw [1990-1991], footnote 25, 1252.

[27]Like Crenshaw's, early works using intersectionality often focused on giving voice to the intersectional groups (See: Hill Collins, Hull, Scott and Smith, King, Brewer, Crenshaw, McCall, Hancock, Prins.), a task which became a 'political and intellectual demand.' See Choo and Ferree [2010], footnote 12.

[28]Crenshaw [1990-1991], footnote 25.

experience of women who are socially, culturally or economically privileged will do little to benefit African American, immigrant or Asian women. The provision of shelters, for example, originally envisioned for a temporary stay until the initial risk has passed and the woman can reorganise herself, become a crucial long term necessity for African American women, who face discriminatory employment and housing practices in the United States.[29] She also recounts how the existing waivers in order to grant resident permits to immigrant women who suffer domestic violence (without the need of staying married for years before getting a personal permanent residence) set a number of requirements which can hardly be met by women who are dependent on their husbands or family, and with limited command of the language.[30]

Authors striving to give voice to the intersectional groups use the individual account of their members to do so. Yet, two complications arise from such attention to the individual. First, personal accounts often become 'essentialised' to represent the complete group, which is in fact the problem that this approach was trying to tackle at the beginning.[31] Secondly, there has been an over-identification of the intersectional approach itself with research projects that pay attention to the individuals and their belonging to an 'intersectional group', leading commentators to suggest that intersectionality aims at addressing 'identities'. For instance, Hunter and De Simone,[32] regard the intersectional approach as mainly encompassing the analysis of identity constructions, rather than examining the ways in which subordination is constructed in particular locations and contexts.

Crenshaw recognises that violence against women of colour could not possibly be explained only through race and gender but that class or sexuality are often critical. Furthermore, in a footnote she says:

> While the primary intersections that I explore here are between race and gender, the concept can and should be expanded by factoring in issues such as class, sexual orientation, age, and color.[33]

[29] Crenshaw [1990-1991], 1246.

[30] Ibid.

[31] This has been particularly criticised by authors like Yuval-Davis, and by other authors doing psychological research. There is a tendency, like Nash points out, to the 'reification of cumulative notions of identity.'

[32] R. Hunter and T. D. Simone, 'Identifying Disadvantage: beyond intersectionality', in Grabham et al. [2009], footnote 4, 159-182, 166.

[33] Crenshaw [1990-1991], footnote 25.

Nevertheless, in 'Mapping the margins', Crenshaw pays limited attention to differences on African American women due to other aspects beside their race and gender. She does not address class, or any other social category which seemingly have an effect among African American women's experiences. She refers to them as a unitary and monolithic group. The scarce attention to within group difference resulting from other intersecting categories is one limitation in Crenshaw's first article. In spite of her intention to 'problematise' the analysis, her final scrutiny of the situation may result in an oversimplification of the position of African American women.

A useful research for illustrating the importance of class and age, besides gender and race, relates to the sexual violence suffered by domestic workers living in the home, conducted in Lima, Peru.[34] This type of sexual violence, although occurring in the labor sphere, fail to qualify as sexual harassment, since domestic workers are often illegally employed. Such violence can not be qualified as domestic violence either, since in most countries it only protects family members or partners. Parra explains how these women, often minors, suffer sexual violence as the consequence of very specific factors coming together. In all of these cases, the construction of gender was largely influenced by the patriarchal Andean culture, where men were entitled to 'teach' women how to behave, even through physical force. In some cases, women are 'given away' at an early age, to perform 'unpaid work' in return for a better education and possibilities in the city, at the hands of the receiving family. In these situations, Parra explains, the patriarchal role of the father is transferred to the employer, making the construction of gender according to the culture a crucial factor leading to the victimisation. Young age reinforces this view of the authority of the employer as a 'father'.

In addition, since most in-home domestic workers come to Lima from the Andes, looking for work and with limited social networks to rely on, staying in the home is sometimes their only possibility. Furthermore, their indigenous background and their often deficient command of the Spanish language are factors contributing to their vulnerable situation as well. Parra also shows how, besides gender, low socio-economic class and the lack of education are clear factors both leading to this type of labour and increasing the risks of suffering violence. Women expressed their shame of being in-home domestic workers, a job normally considered as

[34]T. O. Parra, 'Las trabajadoras domésticas víctimas de violencia sexual en Lima, Perú', Research report, *Development Connections (DVCN)*, January 2007.

'temporary' while individuals finish their studies, or can find a more qualified job. This feeling of shame reinforced their reluctance to disclose the violence. In these cases, isolating gender, race, origin, class, education or language could never reveal the hardships these women face, and would neglect addressing the different dimensions of inequality at stake. Parra, thus, provides a more 'intersectional' account of the suffering of these women.

Nevertheless paying attention to *all* categories which appear to be relevant in a case can also become problematic since an endless sub-division of groups may take place. How representative can the findings be? How should one determine group constitution? How can the group boundaries be drawn, and how stable can they be? Such infinite subdivision may ultimately leave only the individual as object of analysis, with its potential essentialisation to represent the group.

The challenges arising in relation to the use of categories are by now apparent: basing the analysis on only a few categories might render a simplistic and essentialising account of the situation, while including all seemingly relevant categories might end up with a sample that can not be regarded as representative of any group. These difficulties have been tackled by authors in different ways. Leslie McCalls' classification is useful to illustrate the differences in approach among authors doing group-centred intersectionality and the particular problems they face.[35] She distinguishes two approaches, anti-categorical and intra-categorical.

Authors adopting the *anti-categorical approach* confront the use of categories and the process of categorisation itself. They largely reflect the work of post-structuralist feminist scholars such as Judith Butler, and holds that categories are 'simplifying social fictions' that reproduce inequalities in the process of differentiation. This approach focuses on one single social group, assuming that differences are located within the identity. It analyses multiple dimensions within categories. Yet, the group boundaries are eliminated and the (single) 'group' would ultimately be represented by the individual.

Although also questioning the notion of categorisation, authors using an *intra-categorical approach* look at multiple dimensions across categories. They do not reject the use of categories completely, instead they use them tactically. They analyse a single social group at a point of intersections, or a particular social

[35]L. McCall, 'The complexity of intersectionality', (2007) *Journal of Women in Culture and Society*, 1771-1800.

setting, or social construction through the use of case studies. This allows for a comparison between the (more) homogeneous group, and the (more) heterogeneous and detailed one. This is the type of approach used by Crenshaw and most black feminists.

2.4.2 Dynamics-centred

In this section, I analyse authors that focus on the dynamic aspects of subordination and inequality. The main distinction of this strategy from the one the previously examined is that the individual is no longer the centre of attention. Instead, these approaches focus on more than one group, in order to be able to compare them and explore the relations between different categories and dimensions. In other words, they use comparative analysis above the level of the individual, assuming important interactions across contexts. Studies adopting a dynamic-centred perspective take a primary form of oppression and ask how that dimension is subdivided and criss-crossed with other axes of power. Nevertheless, these could be divided among those focusing on the relations among categories, on the processes of categorisation, and on the 'systems' of inequality on the other.[36]

The 'relation/process-based' approach regards multidimensional forms of inequalities as experienced, contested and reproduced in historically changing forms. It sees the dimensions of inequalities themselves as changing and mutually constituting with each other. Yet some theories focus more on either the dynamics of the processes creating inequalities, or on the relations between categories.

One author representative of the *relational* variant of the dynamic-centred view is Hancock.[37] According to her, the particularity of the intersectional approach to research lies in the manner categories are handled, namely, their constitution, the relation between them and the multi-level interaction. She considers that intersectionality relies on four main notions:

1. The relation between categories cannot be known a priori

[36]See: Choo and Ferree [2010], footnote 12; M. M. Ferree 'Inequality, Intersectionality and the Politics of Discourse: Framing Feminist Alliances' in *The Discursive Politics of Gender Equality: Stretching, Bending and Policy- Making* (London: Routledge, 2009) ; M. Verloo. 'Multiple inequalities, intersectionality and the European Union' (2006) *European Journal of Women's Studies*, 13:211.

[37]Hancock [2007], footnote 11.

2. Categories co-construct each other

3. One cannot privilege a single aspect of one's identity to the detriment of another.

4. Multiple marginalisation of race, class, gender, or sexual orientation at the individual and institutional level 'interlock' and create social and political stratification.

Hancock criticises some techniques for addressing categories discussed in the previous section. She considers the full rejection of the notion of categories themselves, (like the anti-categorical approach), not representative of the intersectional approach. In fact, intersectionality does not aim at the elimination of categories, but at making new conceptualisations of them. Secondly, she argues that excessive focus on 'within category difference', may lead to an infinite number of categories and the consequential problems to incorporate them all in the analysis.

The approach used by McCall's in her own intersectionality research, adopted as an alternative to group-centred approaches, is another example of the relational dynamics. She suggests to focus on more than one group, providing a more dynamic view of the intersections. She termed this approach *inter-categorical* since it explores the relation between categories, revealing that intersectional identities are relationally defined and emergent, in line with Hancock, Anthias and Yuval Davis,[38] Hill Collins[39] and Spelman.[40]

In her work, McCall explores not only disadvantage, but privilege as well. She concludes:

> [...] If we dig a little deeper into the complexity of these configurations, we find that the average levels of gender inequality that I just reported are somewhat misleading.[...] the same economic environment creates advantage for some groups of women and disadvantage for other groups of women relative to similarly situated men.[41]

Issues arising from a location of privilege have been a neglected aspect of intersectional research. Initially, intersectionality revolved around categories of discrimination and oppression, focusing mostly on 'disadvantage positioning' without

[38]F. Anthias and N. Yuval-Davis, Contextualizing feminism: Gender, ethnic and class divisions, (1983) *Feminist Review*, 62-75.

[39]P. Hill Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment*, (Routledge, 2008).

[40]E. Spelman, *Inessential Woman* (Beacon Press, 1988).

[41]McCall [2007], 1790.

looking at the complex and intersectional way that positions of dominance/subordination work in order to constitute the subject's experiences of personhood. Therefore, categories that do not put the individual in a situation of subordination, are not commonly analysed by intersectional scholars. Indeed, questions about the interaction between privileged and subordinated positions have so far emerged in (qualitative) projects analysing identity constructions. Yet the comparative nature of the inter-categorical approach seems to facilitate the visibility of privilege if one would decide to invest in its analysis.

McCall and Hancock suggest to use categories 'provisionally' and to study the relations between them. Therefore, McCall starts her research using traditional analytical categories (class, race, gender). She examines each dimension of inequality first (between men and women; between college educated and non-college educated; among blacks, Asians, Latinos/as, and whites; and among intersections of these groups) and then synthesises these data into a configuration of inequality. She discovers different configurations of inequality in the four cities under study (St. Louis, Miami, Dallas and Detroit), which represent different socio-economical contexts as well (high-tech manufacturing; immigrant; postindustrial and industrial, respectively). The main finding of her study is that patterns of racial, gender, and class inequality are not the same across the configurations.[42] She says:

> My findings suggest not only that no single form of inequality can represent the rest but that some forms of inequality seem to arise from the same conditions that might reduce other forms, including, potentially, a conflict between reducing gender inequality and reducing inequality among women.[43]

One limitation of McCall's work, is that it looks at inequality as an outcome, and does not really address the process creating such inequality. The process of elaboration of categories and the generation of inequality are the focus of the second perspective falling under the dynamic-centred approach.

One key author emphasising the dynamic *process of categorisation* is Yuval-Davis. She departs from the notion of 'location', suggested by Crenshaw, and arrives at that of 'differential positioning.' She refers to race, class and ethnicity as 'social divisions', not necessarily indicating oppression, inequality or discrimination. She argues that these social divisions are subject to a process of 'naturalisation' by homogenising projects which deny their ontology as a social-construct and are used

[42]McCall [2007], 1789.
[43]Ibid, 1790-91.

for determining differences among people. This creates a binary distinction, 'belong/not belong', and leads individuals to assume a certain *differential positioning*. Although gender, age and ability do not represent 'social divisions' in themselves, they are still subject to naturalisation discourses, and as a consequence they become, like race, class and ethnicity, *differential positions* as well.

The distinction between categories of positionality and social divisions is a very rich contribution to intersectional analysis since it rejects any simplistic 'identity politics' by bringing awareness of the possible heterogeneity within social groups and uncovering the political implications of 'naturalisation' campaigns.[44] Yuval-Davis rejects essentialist understanding of identities, be it a social identity, or an individual's. She has pointed out that insufficient understanding of this basic difference has led to analytical confusion in UN bodies recommending the use of intersectionality in terms of 'identity', and also has hampered the development of a more nuanced methodology.

In her approach, Yuval-Davis argues that differences based on race, ethnicity, etc. cannot be regarded as a ground of discrimination automatically, since those groups can be positioned differently along the axis of power at different historical times. Yet the changing nature of social divisions and its consequential positioning in power axis is moderate. She holds that groups that are positioned in one specific segment of one axe of power, are often in a specific position in other axes, and she further suggests that:

> In specific historical situations and in relation to specific people there are some social divisions that are more important than others in constructing specific positioning. At the same time, there are some social divisions, such as gender, stage in the life cycle, ethnicity and class, that tend to shape most people's lives in most social locations, while other social divisions such as those relating to membership in particular casts or status as indigenous or refugee people tend to affect fewer people globally [...] recognition (of social power axes, not of social identities) is of crucial political importance.[45]

In any case, the intersecting positioning reveals structural relations of power in a specific context and time.

[44]For more authors holding a similar view, see: E. R. Cole 'Coalitions as a model for intersectionality: From practice to theory', (2008) *Sex Roles*, 59:443-453.

[45]N. Yuval-Davis, 'Intersectionality and feminist politics', (2006) *European Journal of Women's Studies*, 13:193-209, 203.

Importantly, Yuval-Davis regards the formation of political subjects as a contested process of self-creation in a field of power relations. Agency and the construction of political alliances are possible. This premise is also sustained by, among others, Crenshaw and Ferree.

Yet a potential limitation in Yuval-Davis' approach relates to her understanding that each set of social relations originates in a single and separate base which remains autonomous. For instance, she grounds class divisions in relation to economic processes of production and consumption, without considering the influence of education in long term class positioning,[46] access to certain professional and social networks, etc. Gender, in her view, is a differential position connected to discourses on social roles based on sexual difference, while ethnic and racial divisions relate to discourses based on identity politics.[47]

Contrary to views that connect one specific category to one specific domain, the perspective focusing on 'systems' explicitly rejects the identification of specific inequalities with unique institutions. Instead it sees processes as fully interactive, historically co-determining and complex. It de-centres any one process as 'primary', and re-conceptualises the effects of the interactions, and only then identifies them as inherent to the nature of stratification processes. One way of distinguishing between the relational/process from systemic variants of the dynamic approach, is to regard the first ones as 'constructionist', focusing on how categories are constructed, and the system-focused as 'co-creationist', focusing on how they co-create each other.[48] Among these authors, Sylvia Walby refers to Yuval-Davis' reasoning a 'segregationary reductionist' and instead recommends to address each set of social relations (not only social divisions) in their full ontological depth, including the full range of (institutional) domains: economy, polity, violence nexus and civil society. Within each of these domains multiple sets of social relations can be found.[49]

Walby suggests the usefulness of incorporating complexity theory in the elaboration of intersectionality as an active system. She argues that social relations (race, gender, etc.) and domains (economy, polity, violence nexus and civil society),

[46]As it can be argued that education provides class mobility by enhancing the individual's value in the labour market, class is therefore certainly linked to economic processes.

[47]As explained above, Yuval-Davis does not consider gender, age or disability as social 'divisions'.

[48]See Choo and Ferree [2010].

[49]S. Walby, 'Complexity theory, systems theory, and multiple intersecting social inequalities', (2007) *Philosophy of the Social Sciences*, 37(4):449-470, 454.

must be regarded as 'systems.' This idea has two implications: on the one hand, it departs from the traditional rigid view of a system as 'made up of its parts', and on the other, the dynamics within the construction processes of intersecting inequalities can be fully captured. This innovative view of 'systems' shows the differences with the approaches to intersectionality previously examined.

First of all, systems can overlap and they are often not nested within a particular domain, institution, etc. This would mean that, for example and in contrast to Yuval-Davis view, class would not only be constructed in the economy, but possibly in other domains, like polity or civil society. The same would occur with other social relations. Walby warns us that 'inequalities do not directly map onto each other'. Like McCall argued before, gender inequality would not necessarily correlate to class inequality, or race inequality would also not necessarily correspond to class inequality, or gender inequality and so on. This will depend on the configuration that occurs in a specific context.

Secondly, each system takes all other systems as its environment. As a consequence, in line with Hancock's view, one cannot refer to an immediate hierarchy in the relation between social relations, not even in relation to specific domains. For example, 'the violent nexus', could be explored in all domains, in relation to all different social relations/divisions, and different configurations affecting violence can be discovered in each of them. This allows flexibility to study the connections at stake (the configurations of inequality, in the words of McCall) in all different domains. In relation to violence against women, such postulates would allow to explore situations where women may experience special configurations making them victims of one type of violence in one domain, for example, the polity, a different one in the economy, and yet another in relation to the civil society.

Third, Walby holds that every system is contingent, again in line with Hancock and McCall. Yet, she takes it further, and says that not only social relations are expected to be changing, but also the constitution of the domains itself, specially the economy. Changes in the other domains (civil society, polity and violent nexus), are not hard to imagine either. Yet, this contingency cannot be expected to be unlimited. Walby suggests the boundaries: there is a certain 'path dependency', namely, a pre-determined course which will 'contain' these changes and prevent them from being completely random.

In fact, contingency is dependent on the evolution of loops. Walby explains that there are some events, even small ones, which lead to another event, and that one to another, creating feedback loops: negative loops would then lead to equilibrium of the system, a positive loop will indeed lead to change. Nevertheless, some processes may lock-in certain paths of development, for example, by rewarding, giving opportunity and fostering knowledge. Here institutions play a major role in bringing about change. Such course of events seems to be only traceable through longitudinal studies, and by extensive historical reviews.

The third postulate of Walby's system theory challenges one of the assumptions of the original Spiral Model of Change, discussed in chapter 1, subsection 1.3.1, on the role of non-State actors in achieving compliance with human rights norms on VAW.[50] One of the shortcomings of the Spiral Model was indeed the difficulty to explain why the process of socialisation of human rights norms often gets 'stuck', and progress from the phase of 'tactical concession' to full compliance with norms is never achieved. The existence of counter discourses to human rights claims, and their support by certain groups, have confirmed that the discursive action is not uni-directional, and that even in late stages of the model drawback processes can take place. In relation to VAW, it seems useful for discovering the processes leading to the violence and away from it.

2.5 Critiques and Limitations

There have been many different critiques to intersectionality, highlighting different limitations of the approach. At early stages in the elaboration, when the intersectional approach was most commonly linked to qualitative approaches trying to include marginalised groups, one concern was recurrent: how to give voice without conflating it or fixing it to a group. This has become less of a concern with the dynamic approach, focusing on the relation among categories or on the process of categorisation, especially by including quantitative analysis.

Another early concern was the lack of attention to the agency of individuals and groups, and the role of opportunity. Nevertheless, Crenshaw early argued that 'the social power in delineating difference need not be the power of domination; it can

[50] See: *The Persistent Power of Human Rights, from commitment to compliance*, Risse, Ropp and Sikkink (eds). (Cambridge University Press, 2013).

instead be the source of social empowerment and reconstruction.'[51] This has often been connected to the political construction of the self, quite largely addressed by different authors, like Yuval-Davis, Choo and Ferree.

Another gap relates to the excessive attention to oppression and not so much on privilege, or in fact, the absence of both. Yuval-Davis highlights the 'differential positioning of groups and individuals, encompassing both disadvantage and privilege'. Warner recommends a 'neutral' approach to the location or position of the individual in the construction of the identity. Arguably, intersectionality today has a broad focus, beyond disadvantaged positioning. As commented elsewhere, the comparative approach taken by the relation-based dynamic approach seems to facilitate the discovery of 'privileged positions' of an intersectional group.

Yet, mosts criticisms seem to imply that research intending to analyse categories of distinction which create inequality should start from 'outcomes', and then move to enquire after the 'processes' which produce such unequal outcomes. As such, it has been suggested that the term of 'intersection' itself 'may lead to formulaic analysis', and conveying the impression of 'stasis' rather than movement and fluctuation.[52] The focus needs to 'shift' to include structural dynamics and power. There is no way back to static accounts of marginalised experiences, or like Hancock terms, to the stage of intersectionality as 'content discipline'.

Hancock argues that 'intersectionality' indicates not only a theoretical argument but, more importantly, an approach to conducting empirical research.[53] She considers that most of the early work using intersectionality can be addressed as a 'content discipline in populations with intersectional identities', concentrating on case studies, comparing intersectional groups, differences and similarities among them. Such an approach needs to give way to a new one, regarding intersectionality as a 'research paradigm', representing a set of primary notions preceding questions for empirical research relating to race, gender, class and other organising structures of society.[54] The particularity of the intersectional approach to research lies on the manner in which categories are handled, namely, their constitution, the relation between them and the multi-level interaction.[55] Shields[56] explains how

[51] Crenshaw [1990-1991], 1242.
[52] Grabham et al. [2009], 14.
[53] Hancock, footnote 11, 63.
[54] Hancock, 64.
[55] See section 2.3 on the theoretical notions underlying intersectionality.
[56] See Shields [2008].

intersectionality is often used as a perspective instead of as a paradigm driving the research question in quantitative research, like Hancock suggests. This, she argues, might be connected to the availability of methodological tools to incorporate intersectionality 'meaningfully'.

Yet there is another type of critique, more recently made. Strid, Walby and Armstrong argue that, although with the exception of authors such as Lombardo and Verloo,[57] Alonso[58] and Krizsán,[59] discussions about intersectionality have been too focused on theoretical aspects rather than on the practical application of it.[60] They suggest that previous research claiming that groups at the intersection of inequalities are invisible and silenced derives from an overly narrow understanding of intersectionality. They argue that in order to discover whether an intersectional approach is taken by policies, what is actually used and made visible in them needs to be the point of departure.[61] Furthermore, they question the idea that 'visibility necessarily equates with recognition and voice, or that invisibility necessarily means a lack of inclusion and intersectionality'.[62] This critique is of particular interest for the purpose of this thesis, that is, identifying whether and how intersectionality has been captured within human rights norms on violence against women.

2.6 Intersectionality in this thesis

2.6.1 Looking for intersectionality in the law: techniques

Having discussed the theoretical aspects of intersectionality and commented on the perspectives of some of the main authors, the reader has now a 'technical' understanding of intersectionality. But how can we identify an intersectional approach in the letter and practice of law, more specifically, in relation to human

[57] E. Lombardo and M. Verloo, 'Institutionalizing intersectionality in the european union?', (2009) *International Feminist Journal of Politics* 11(4):478-495.

[58] A. Alonso, 'Intersectionality by other means? New equality policies in Portugal', (2012) *Social Politics* 19:4, 596-621.

[59] A. Krizsán, Equality architectures in Central and Eastern European countries: A framework for analyzing political intersectionality in Europe, (2012) *Social Politics*, 19:4, 539-71.

[60] S. Strid, S. Walby, and J. Armstrong, 'Intersectionality and multiple inequalities: Visibility in British policy on violence against women', (2013) *Social Politics* 20:4.

[61] Ibid, 563.

[62] Ibid, 574.

rights norms on VAW? How is 'intersectionality' addressed by judicial and non-judicial bodies? Two techniques can help to identify the intersectional approach in human rights documents. The first technique tries to identify implicit references to intersectionality and for its configuration I have found inspiration and guidance in the work of Satterthwaite[63] and Strid, Walby and Armstrong.[64]

Satterthwaite tries to establish whether the existing international human rights documents provide protection to women migrant workers, even in the absence of a dedicated document, explicitly addressing such rights.[65] She suggests that viewed through the framework of 'applied international intersectionality', all major treaties have significant contributions to make to the empowerment of women migrant workers. She argues that when intersectionality is used as an 'interpretative methodology', the resulting analysis allows for the identification of standards that would otherwise seem excluded by the human rights framework, 'revealing a wide variety of empowering norms'.

> The problem, then, is not one of missing norms, but one of missing interpretations.[66]

Satterthwaite thus elaborates an interpretative framework that first identifies core principles applicable to migrant women workers and then analyses the relevant substantive treaty norms applicable to the main types of violations these women face.

In my own version of 'applied intersectionality' I start the configuration of my 'interpretative framework' by identifying the core theoretical notions of intersectionality and subsequently looking for similar constructions within the human rights documents on VAW. Derived from the theoretical principles discussed in this chapter, the 'core principles' of intersectionality that should be reflected in the texts are the following:

- Violence against women is connected to multiple forms of oppression/multiple discrimination/compounded discrimination/multiple inequalities that affect (certain groups of) women;

[63] See Satterthwaite [2005].
[64] See Strid et al. [2013].
[65] Adopted in 1990, the International Convention on Migrant Workers entered into force in 2003 due to the slow pace of ratification. To date, States which are most often selected as destination for migration, such as European States, North-American States or Australia, has ratified the Convention.
[66] Satterthwaite [2005], 3.

- There are certain groups of women, located at the intersection of two or more social categories of distinction, that are vulnerable to violence and/or that posses specific needs as the result of the violence;
- Violence against women is connected to multiple policy domains; and
- Violence against women is connected to structural (institutional and social) systems of oppression.

In a similar vein to Satterthwaite and in line with the purpose of this thesis, Strid et al. examine the visibility of multiple inequalities and their intersections on British policy documents on violence against women. The authors explain that for empirical analysis, 'the understanding that inequalities are interconnected but can simultaneously be named separately and distinguished is very important.'[67] In their analysis of policy texts, the authors looked for key concepts making reference to multiple inequalities ('multiple disadvantaged,' 'most vulnerable women,' 'black and ethnic minority women,' 'multiculturalism,' 'diversity,' and 'multiple oppression') and social categories (e.g. gender, class, ethnicity/race, religion, disability, sexuality, and age).[68] These keywords, and also 'multiple discrimination', 'compounded discrimination', 'double discrimination', 'vulnerable factors' and 'vulnerable groups', will help in identifying references to intersectionality in this thesis.

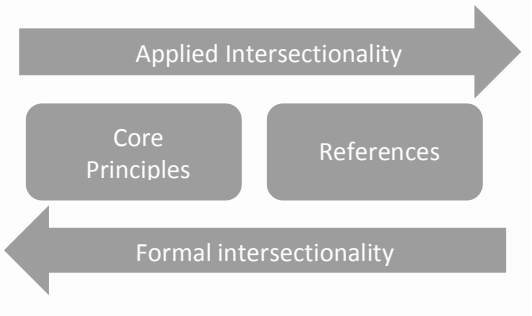
The second step in my analysis of human rights documents on VAW is to explore whether the keywords mentioned above can indeed be considered as implicit references to intersectionality. Thus, they are analysed in contrast to the core principles of intersectionality mentioned above. Are these keywords connected to the field of violence? Are they seen as intersecting across different forms of violence? Are they interconnected across different domains, for instance, violence and the economic sector? The answers to these questions should be compatible with the core principles of intersectionality above in order to consider them as 'implicit references'. The basic process of 'applied intersectionality' is illustrated in Figure 2.4.

FIGURE 2.4: Process of Applied Intersectionality

[67] Strid et al. [2013], 560.
[68] Ibid, 564.

In contraposition to the 'applied intersectionality' technique, I also analyse 'explicit' references of 'intersectionality' or the 'intersectional approach' within the human rights framework on VAW. The keywords in this technique ('intersectional' and 'intersectionality') make explicit reference to the intersectional approach, and consequently, I believe they constitute a 'formal' recognition of intersectionality even if such recognition is tokenistic and does not correspond to the core principles of intersectionality.

FIGURE 2.5: Applied and Formal Intersectionality: reverse techniques



The seemingly opposing approaches taken by 'applied' and 'formal' intersectionality, applied to chapters 3 and 4, are illustrated in Figure 2.5. The found references to the intersectional approach and the theoretical notions connected to it, either found through applied intersectionality or formal intersectionality, are compared to theoretical views elaborated in this chapter, showing possible gaps between the 'technical' understanding of the intersectional approach, and the 'normative' one.

Beyond mere references to intersectionality, meaningful recognition of intersectionality implies a certain coherence between the found references and the theoretical aspects of intersectionality. Furthermore, substantial recognition of intersectionality within the human rights documents on VAW would arguably carry consequences for States. In their research, Strid et al found the visibility of inequalities in policies to range from simply naming inequalities to a substantive recognition of intersectionality that has an effect on the policy output. Multiple inequalities and intersectionality were indeed visible in policies in three levels:

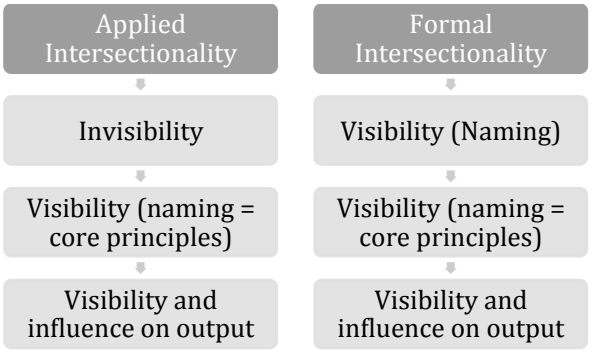
1. Naming of inequalities;
2. Naming and identification of intersectional inequalities through different fields of violence and policy domains; and
3. Inclusion of voice of minority women in the policies.[69]

[69]See Strid et al. [2013].

In the context of my research, the range of recognition of intersectionality will vary depending on whether it emerges through applied or formal intersectionality. In relation to applied intersectionality, recognition may go from 'invisibility' (the absence of references) to mere naming of intersecting inequalities across violence and domains (implicit reference but without any real implications) to actually making references to the intersecting inequalities within the general framework of obligations of the State to prevent, protect, punish and provide reparation to in relation to VAW (having an influence in the outcome of the document).

In 'formal intersectionality', visibility will be the starting point, yet whether these are empty references or they actually correspond to the core underlying notions examined in this chapter or actually have any real influence on the output of the documents are still open questions. Identifying 'formal intersectionality' in the texts will thus require the same three-level analysis suggested for applied intersectionality: first of all, to identify the explicit naming of intersectionality; second, to identify the connected theoretical and legal notions; and third, explore whether those references actually have influence on State obligations. These different 'levels of recognition' attached to one or another technique are illustrated in Figure 2.6 below.

FIGURE 2.6: Levels of Recognition of Intersectionality



In Part II, Chapters 3 and 4, the techniques explained in these section are deployed in the analysis of human rights documents on violence against women. In the following section, I elaborate in more detail the three main social categories addressed in intersectionality research, - gender, race and class - in order to establish the theoretical basis of the intersectional approach deployed in the case studies in Part III dedicated to the empirical application of intersectionality to cases of VAW.

2.6.2 Intersectionality in the empirical cases: main social categories of analysis

There seems to be some agreement among authors about the core categories that should be included in any intersectional study. Yuval-Davis suggests gender, race and class, since they 'tend to shape most people's lives in most locations'.[70] Similarly, Walby reminds us that 'class, gender, and race are complex adaptive systems that coevolve in a changing fitness landscape'.[71] In clarifying their scope and content, the connections between the social categories are also taken as a constitutive part in all of them. These three categories will constitute the basis of the empirical analysis in this thesis. In this section, a general outline is provided while they will be refined to capture the concrete cases in chapters 6 and 7.

'Gender' refers to attributes that men and women exhibit and which are constructed through socialisation, persuasion, and by social and physical control mechanisms that exist in the law, the workplace, the community and the family.[72] Symbolic and structural boundaries are created, within which social roles are attributed to men and women. Hence, formal and informal control mechanisms influence the construction of gender. Aspects commonly falling under such 'control' relate to the sexuality of women, including sexual orientation, reproduction, constructions of the body and the position of women within the family. However, the role of women in the community is also 'controlled' by the type of jobs that are available for women, formally and in practice, and the type and range of participation in the public sphere. These are all elements that point to the particular social construction of gender in a given society, and will be taken into account in the case studies. In addition, there is an inherent connection between gender constructions and racial constructions.[73]

There is another discussion around gender that should be mentioned as well. While Yuval-Davis considers gender as socially constructed, this construction is based on the 'biological sex'. She describes gender as 'a mode of discourse that relates to groups of subjects whose social roles are defined by their sexual/biological difference while sexuality is yet another related discourse, relating to constructions

[70] Yuval-Davis [2006], 203. Although the author refers to 'ethnicity', I will refer to 'race' as an umbrella term covering ethnicity as well.

[71] Walby [2007], 463.

[72] C. F. Epstein, 'Similarity and Difference: The Sociology of Gender Distinctions', *Handbook of the Sociology of Gender*, (Springer, 2006), 46.

[73] See for instance: Collins [2008]; Hull et al. [1982]; Crenshaw [1989].

of the body, sexual pleasure and sexual intercourse.'[74] Butler, on the other hand, argues that the 'biological sex' has no longer an anchor function once gender is constructed socially. She explains:

> If gender consists of the social meanings that sex assumes, then sex does not accrue social meanings as additive properties, but rather is replaced by the social meanings it takes on; sex is relinquished in the course of that assumption, and gender emerges, not as a term in a continued relationship of opposition to sex, but as the term which absorbs and displaces sex.[75]

This disconnection of gender from sex would make it possible to include under the category of women everybody whose gender, regardless of biological sex, is constructed as such. However, as briefly discussed in the introduction to this book, the human rights norms this thesis is trying to analyse exclude such possibility, and therefore, although I will focus on the social construction of gender, only women will be the focus of the study.

'Race' as a social category is far from a coherent set of established prepositions. Goldberg explains that 'the concept of *race* seeped into European consciousness more or less coterminous with exploratory voyages of discovery, expansion, and domination in the latter part of the 15th century.' The term came to indicate groups 'different from the European eye itself', thus referring to those perceived and constituted as 'others'.[76] Race, thus, is constructed as a discourse, or a 'field of racialised discourse', according to Goldberg, an open-ended theoretical space consisting of multiple expressions that create and transform the discourse.[77] For instance, from a historical perspective, Mitchell[78] refers to different moments when different notions prevail, such as the 'moment of blackness', 'the antisemitic moments', while references to the 'primitive' and 'civilisation' are common to colonial racialised discourses.

Hill Collins and Solomos explain that the various elements that form part of the discourse articulate images of the 'others' and 'us', and in doing so, the boundaries of the 'nation' and 'race' are defined.[79] Similarly, Yuval-Davis agrees that ethnic

[74]Yuval-Davis [2006], 201.
[75]J. Butler, *Bodies That Matter: On the Discursive Limits of Sex* (Routledge, 1993), 5.
[76]D. T. Goldberg. *Racist Culture* (Blackwell, 1993), 62.
[77]Ibid, 42.
[78]W. T. Mitchell *Seeing Through Race* (Harvard University Press, 2012).
[79]P. H. Collins and J. Solomos, (eds). 'Introduction: situating race and ethnic studies', in *The SAGE handbook of race and ethnic studies.* (SAGE, 2010).

and racial divisions relate to discourses of collectivities constructed around those exclusionary/inclusionary boundaries.[80] These boundaries, she explains, are often organised around myths of common origin and a common destiny. In addition, constructions of the body, religious and other cultural codes concerning marriage and divorce are also essential in the construction of those racial and ethnic boundaries.

The content of race and ethnicity as a social category can thus only be established once the racial boundaries are identified and this is always context and historically dependent. For instance, Hill Collins and Solomos emphasise the intersection between race and global social processes, and point to the construction of racial boundaries around notions of citizenship and migration. Nevertheless, although they recognised that there are 'new patterns of racial reasoning' around some key aspects of social relations and that 'contemporary' and 'traditional' forms of racism can be distinguished, there are some continuities as well.[81] Goldberg explains that there is a social conjuncture of racialised discourse that will facilitate the determination of the racial boundaries.[82] Accordingly, this social conjuncture will show what is considered to constitute 'race' in the concrete case studies.

Regarding class, Yuval-Davis argues that class division is based on economic processes such as consumption and production. For Acker, class refers to 'enduring and systematic differences in access to and control over resources for provisioning and survival'.[83] In wealthy industrial societies, money is the most valuable resource, hence, class is intrinsic to employment and, in most organisations, hierarchical positions are congruent with class processes in the wider society. Income and employment will constitute the basis of class as social category in the empirical studies.[84] However, Acker also reminds us that 'race,' even when paired with 'ethnicity,' encapsulates multiple social realities always inflected through gender and class differences. 'Class' is also complicated by multiple gendered and racialised differences.'[85]

Nevertheless, Hochreiter prompts an interesting question: 'Does the triad of "race, class, and gender" sufficiently describe what happens to a marginalized person in

[80] Yuval-Davis [2006].
[81] Collins and Solomos [2010],11.
[82] Goldberg [1993], 42.
[83] J. Acker. 'Inequality regimes: Gender, class, and race in organisations', (2006) *Gender & Society*, 20(4): 441-464, 444.
[84] Ibidem.
[85] Acker [2006], 442.

a certain situation or context or does it help to meet her/his needs in society?'.[86] This hesitation is partially addressed by Warner, who argues that while some dimensions are salient to most people most of the time, like race and gender, some differ per group and across particular historical moments.[87] The flexible construction of the categories as outlined above, particularly that of race, may allow the inclusion of additional aspects apparently excluded from this triad of categories, such as migration, nationality, indigeneity or citizenship. The full extension of the categories thus, will emerge in relation to the concrete case studies in Part III of this thesis, chapters 6 and 7.

[86]S. Hochreiter. 'Race, class, gender? intersectionality troubles', (2011) *Journal of Research in Gender Studies* 1(2):49-56.

[87]L. R. Warner, 'A best practice guide to intersectional approaches in psychological research', (2008) *Sex Roles*, 59:454-463.

Part II

Intersectionality in International Human Rights norms on VAW

Chapter 3

The United Nations

> To know the laws is not to memorise their letter but to grasp their full force and meaning.
>
> Marcus Tullius Cicero

3.1 Introduction

In this chapter, the 'intersectional techniques' discussed in section 2.6.1 of chapter 2 are applied to the international human rights framework on Violence Against Women (VAW) in order to answer the first and second research question of this thesis: How is intersectionality currently positioned within the international human rights framework to violence against women and what are the derived duties of States?. The configuration of the normative framework has been discussed in chapter 1, and accordingly, the constitutive elements will include 'directly consensual sources', such as Conventions, Declarations and United Nations General Assembly (UN GA) Resolutions, and 'indirectly consensual sources', such as General Recommendations of treaty bodies. The obligations arising in connection to references to intersectionality will be identified considering the principles of interpretation discussed in subsection 1.4.2 of chapter 1. In this chapter the focus lies at the international level, addressing human rights documents of the United Nations (UN).

At the time of writing, the UN has not adopted any international binding convention or treaty dealing with VAW specifically, yet several norms of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[1] are applicable to VAW. These have been confirmed and elaborated upon by the UN Committee on the Elimination of Discrimination Against Women (CEDAW Cee). The UN GA has also taken an interest in VAW and contributed to the elaboration of a comprehensive applicable framework. In addition, several International Human Rights Conferences have contributed both directly and indirectly to the framework as well. Finally, some additional United Nations' bodies, although not engaged in the elaboration of the normative human rights framework directly, produce reports and documents which provide crucial information to bodies which will ultimately do so. This is the case of the United Nations Secretary General (UN SG) and the United Nations Special Rapporteur on Violence Against Women (UN SRVAW). The most relevant contributions of these two bodies are included in this analysis in order to provide the reader with some sort of *Travaux préparatoire* of the current applicable framework.

3.2 CEDAW and General Recommendations

The final text of the CEDAW, adopted in 1979, did not explicitly require states to eliminate VAW. Only trafficking in women and exploitation of prostitution was included as a violation of women's human rights in article 6. Consequently, awareness raising and lobbying of feminist scholars and women's movements for the inclusion of other forms of VAW within the international human rights framework continued for decades.[2]

The CEDAW Cee, established by the Convention[3], is in charge of monitoring domestic implementation. One of the tasks of the Committee to such purpose is to issue General Recommendations (GRs), guiding State parties in the mandated

[1] UN General Assembly, Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13, available at: `http://www.refworld.org/docid/3ae6b3970.html` [accessed 7 December 2014].

[2] See: R. Copelon, 'International Human Rights Dimensions of Intimate Violence: Another Strand in the Dialectic of Feminist Lawmaking', (2003) *Journal of Gender, Social Policy & The Law*, 11:2, 865; S. E. Merry. Gender Violence as Human Rights Violation, in *Gender Violence: A Cultural Perspective.* (Blackwell, 2009); C. Chinkin, 'Violence Against Women: The International Legal Response', (1995) *Gender & Development*, 3:2, 23-28.

[3] CEDAW, footnote 1, article 17.

reporting process.[4] These general recommendations, as part of the Committee's interpretative task, are complementary to the Convention, and consequently, binding on state parties.[5]

Another task of the CEDAW Cee is to review individual complaints against States, based on their lack of compliance with CEDAW. The Optional Protocol to the CEDAW Convention (CEDAW-OP)[6], adopted in 1999, allows for the right of individual petition, or *individual communications* in the language of the Protocol, provided a number of conditions are met. The Committee analyses the case and issues *views*, making binding recommendations to States. In this chapter, both General Recommendations and Views on individual cases are analysed.

The CEDAW GRs discussed in this section are divided into three segments. While the first segment focuses on recommendations fully dedicated to VAW, the second addresses recommendations that partially elaborate on VAW, in connection to specific issues and contexts. Finally, the third segment examines GRs dealing with the general obligations of States under the Convention. In all of them I will elaborate on the existent references to intersectionality and the emerging duties of states in relation to VAW.

General Recommendations fully dedicated to violence against women
Three recommendations are fully dedicated to VAW: General Recommendation 12 on Violence Against Women (GR 12)[7], General Recommendation 14 on Female Circumcision (GR 14)[8] and General Recommendation 19 (GR 19).[9] These

[4]State parties are obliged to submit detailed reports to the Committee periodically. The committee's *General Observations* on the domestic implementation of the Convention resulting from this procedure are binding on States.

[5]The binding character of general recommendations and their norm generating power is discussed in chapter 1, 1.4.1 on page 35.

[6]UN General Assembly, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83, available at: `http://www.refworld.org/docid/3ae6b3a7c.html` [accessed 7 December 2014].

[7]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No.12: Violence against women, 1989, available at: `http://www.refworld.org/docid/52d927444.html`, [accessed 7 December 2014].

[8]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No.14: Female Circumcision, 1990, A/45/38 and Corrigendum, available at: `http://www.refworld.org/docid/453882a30.html`, [accessed 7 December 2014].

[9]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendations Nos. 19, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), available at: `http://www.refworld.org/docid/453882a422.html`, [accessed 7 December 2014].

constitute the core of what will be called the 'VAW domain.'

GR 12 addresses VAW for the first time within the work of the Committee.[10] In three brief paragraphs, the Committee considered that '*the protection of women against violence* of any kind occurring within the family, at the workplace or any other area of social life' was a requirement of the Convention under articles 2 (obligation of State parties), 5 (measure to modify social patterns), 11(non discrimination in the field of employment) and 12 (non discrimination in the field of health). This recommendation indicates that States *should include in their reports information* on legislation and other measures to protect women from violence, on the provision of services to victims and to provide statistics on the incidence of the violence and the victims. No references to intersecting inequalities or resembling an intersectional approach are found.

In 1990, the Committee issued GR 14[11] elaborating on the obligations that States have undertaken upon ratification of the Convention in relation 'female circumcision'. It refers to culture, tradition and economic pressures as contributing toward the propagation of the practice. Without making explicit reference to categories of distinction or to 'multiple inequalities' or 'special vulnerabilities' or 'vulnerable groups', GR 14 recognises the special influence of certain structural elements (economic pressure and culture) in relation to female genital mutilation, suggesting that not all women face the same risks. One can then argue that, although there are no explicit references to intersectionality, an embryonic form of the basic theoretical notions of intersectionality can be perceived.

Nevertheless, this implicit 'intersectional' take on female circumcision is not fully reflected in the output of GR 14. It recommended States to take measures directed at eliminating the practice of female genital mutilation, to collect data, support women organisations and NGOs, and importantly, it suggested strategies, such as involving politicians, professionals, religious and community leaders at all levels, including the media and the arts, in order to change attitude towards the practice. Education programs and training, and even seminars on research findings were also recommended. None of the measure thus target the special 'vulnerable' situation of some women.

[10] GR 12, footnote 7.
[11] GR 14, footnote 8.

Two years later, in 1992, the CEDAW Committee explicitly included VAW as a matter falling under the scope of the Convention in GR 19. The clear underlying notion is that VAW stems from discrimination against women and that in turn, it contributes to the perpetuation of such discrimination. GR 19 introduces for the first time the notion of 'gender' to the work of the Committee. In doing so, GR 19 highlights the embedment of VAW in social and cultural norms and practices, violating articles 2(f), 5 and 10(c) and holds that traditional attitudes regard women as subordinated to men or as having stereotyped roles perpetuate practices such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. These practices affect the physical or psychological integrity of the person and hinder women's political participation, education and work opportunities. Furthermore, gender stereotypes lead to the propagation of pornography and the commercial exploitation of women as sexual objects.[12] Gender as a social construct becomes from this moment onwards a crucial, yet not the only ground of subordination of women.

The references to social and cultural practices have undergone different readings throughout the past years. Although the aim of GR 19 was arguably to challenge social perceptions of women's subordination as 'natural' or socially condoned by emphasising the social construction of subordination, references to 'tradition' have led to stigmatisation of specific cultures and some blindness toward women's inequality and subordination existing within western societies.[13] This perception was probably further enforced by highlighting 'traditional' forms of violence as direct consequence of the subordinated position of women[14] and suggesting that such practices occur in 'some States'.

Even if the social construction of gender is tinted by 'culture', 'gender' remains the overarching ground of discrimination affecting women according to GR 19 and a crucial notion for addressing and understanding violence against women. Consequently, gender inequality is the target of the overarching recommendations to States. The Committee asks states to adopt effective measures to 'overcome these attitudes and practices'. States *should* ensure that the media respect and promote respect for women; and identify and report on the nature and extent of attitudes, customs and practices that perpetuate violence and the types of

[12]GR 19, para 12.

[13]About this topic see: B. Winter, D. Thompson & S. Jeffreys, 'The UN Approach to Harmful Traditional Practices', (2002) *International Feminist Journal of Politics* 4:1, 72-94.

[14]GR 19, footnote 9, para 11.

violence resulting from them. States *should* further introduce education and public information programmes contributing to eliminate prejudices that hinder women's equality.

In addition, GR 19 confirms that the State is responsible not only for the acts of public agents but also for private actors if 'they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation'.[15] Consequently, it recommends States to take 'appropriate and effective measures' to overcome all forms of gender-based violence, whether by public or private act.[16] It illustrates what 'effective protective measures' require as a minimum:

1. Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including intrer alia violence and abuse in the family, sexual assault and sexual harassment in the workplace;

2. Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;

3. Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence.

GR 19 analyses how violence affects different aspects protected by the Convention. In doing so, it connects violence against women with the violation of individual human rights rights and certain domains specifically covered by the Convention, such as the family (article 16), health (article 12), employment (article 11) and education (article 10), expanding those articles enumerated in GR 12. Within each of these domains, GR 19 incorporates a number of elements in addition to gender. In addition, armed conflict and rurality, appear as specific policy domains as well.

In relation to the family domain, GR 19 addresses family violence and abuse affecting women 'of all ages' and 'in all societies'. It includes different violent acts and behaviours, including rape and sexual violence. Although gender is clearly the main focus of attention in this domain (beside the cultural references discussed above), GR 19 highlights economic dependency as a factor having consequences for women 'to stay in the relationship'. In doing so, personal means as in material

[15]GR 19, para 9.
[16]GR 19, para 24 (a).

resources is added to the 'gender' equation. This recognition however, does not indicate how the marriage may promote such dependency nor does it analyse any 'intersecting inequalities', since the capacity of acquiring economic independence is not analysed or connected to potential difficulties arising from the woman's disadvantaged position based on any other grounds.

There are additional types of violence falling within the family domain. For instance, the right to equality in the family and family planning brings up the issue of *compulsory sterilisation or abortion* which has negative consequences for women's health and wellbeing and infringes on their right to decide on the number and spacing of their children. The Committee calls for measures that 'prevent coercion in regard to fertility and reproduction, and to ensure that women are not forced to seek unsafe medical procedures such as illegal abortion because of lack of appropriate services in regard to fertility control'.

In relation to the domain of health care, VAW is seen as endangering women's health and lives. Practices such as *dietary restrictions for pregnant women, preference for male children and female circumcision or genital mutilation* are particularly harmful to women's health. Although the consequences for health of family violence and sexual violence are mentioned in other paragraphs, this enumeration of forms of violence seems too narrow and selective. The Committee dedicated GR 24 to health in 1991[17], confirming the connection between the prevention and protection of women from violence and the full respect of women's rights the the highest attainable standard of health. GR 24 points out the 'special vulnerability' of 'migrant women, refugee and internally displaced women, the girl child and older women, women in prostitution, indigenous women and women with physical or mental disabilities'[18] and points out that girls are often vulnerable to sexual abuse and unwanted and early pregnancy. It also recalls the negative health effects of female genital mutilation.

One particular form of violence affecting women in relation to the domain of employment is *sexual harassment*, defined as any 'unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, by words or actions'. Such acts would yield two

[17]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I, available at: `http://www.refworld.org/docid/453882a73.html`, [accessed 7 December 2014].

[18]Ibid, para. 6.

results, humiliation and possibly put the woman at a disadvantaged position at work. There is no elaboration of specific aspects in relation to sexual harassment that would suggest that any 'intersectional elements' were taken into account.

Exploitation, analysed in relation to article 6 is implicitly connected to the domain of employment since it refers to 'unemployment' and poverty as structural factors leading to trafficking and other forms of sexual exploitation, such as sex tourism, domestic labour, organised marriages and prostitution. In this respect, GR 19 puts special emphasis on the existence of a global market for such forms of exploitation, women from 'developing' countries being 'employed' in 'developed' countries. The resulting practices 'put women at risk of violence and abuse'. In the case of prostitutes, the risk of violence is specified even further: they are 'specially vulnerable' to rape and sexual violence. Also within the domain of exploitation, wars, armed conflicts and the occupation of territories also contribute to prostitution, trafficking and sexual assault, although not as clearly as unemployment and poverty.

The analysis of exploitation is probably the most spontaneous 'intersectional' notion included in GR 19. In order to analyse exploitation, it looks beyond gender and brings in class, national origin, age and, implicitly, migrant status as intersecting categories making women 'specially vulnerable' to these forms of exploitation. Such view matches the core principle of intersectionality that considers that certain groups of women, located at the intersection of two or more categories of distinction are vulnerable to violence and/or that posses specific needs as the result of the violence'. Furthermore, GR 19 looks not at categories alone, but at 'systems of oppression', in line with the principle of intersectionality that indicates that 'violence against women is connected to structural (institutional and social) systems of oppression'. More importantly, this intersecting view is not only 'visible', but it is reflected in the recommended measures: it requires States to describe the extent of all these problems and the measures, including penal provisions, preventive and rehabilitation measures[19] and calls for specific protective and punitive measures.[20]

References to notions similar to those suggested by intersectionality are also made in connection to rural women. Having a dedicated article in CEDAW, rural women are also particularly addressed in GR 19. Rurality is regarded as generally affecting women's access to services, but when young age and migration are added to rurality

[19]GR 19, para 24 (h).
[20]GR 19, para 24 (g).

it leads to a specific form of violence: sexual exploitation. It recommended two basic measures: to make services accessible and to provide special services in isolated communities if needed.[21] Yet the 'intersectional view' is translated into the call on States to provide rural women with training and employment opportunities and to monitor the employment conditions of domestic workers.

The family domain is clearly the dimension where the strong gender norm is more directly felt. In this domain, family violence is considered as a universal problem, potentially affecting *all* women. This gender norm is inherently dependent on cultural and social norms, and such connection is suggested by references to practices taking place within the family that are considered as culture-related, such as forced marriages, early marriages, forced pregnancies, etc. However, although gender is considered as the main ground contributing to the violence, there are many intersections being pointed out without making explicit references to 'intersectionality'. Poverty and unemployment in combination to gender clearly pave the way for exploitation of women, which in turn will potentially result in physical and sexual violence. These factors may interact with migration, and in addition to rurality, lead to sexual exploitation as well. Armed conflicts and wars are contributing factors for trafficking, prostitution and sexual assault. Specific groups of women are considered as particularly vulnerable: prostitutes, domestic workers, and rural women.

Thus, considering CEDAW General Recommendations fully dedicated to VAW, GR 12, 14 and 19, a perspective coherent with the intersectional approach seems to emerge already in the 90s, in the early work of the Committee. Using the 'applied intersectionality technique', described in chapter 2[22], these first GRs make reference to some of the underlying intersectionality principles (naming = core principles), which reflect in the types of recommendations made, hence influencing the obligations of States (output). I illustrate this approach in Figure 3.1 below.

General Recommendations partially addressing violence against women
In addition to General Recommendations fully dedicated to VAW, several recommendations that elaborate on VAW in connection to one of the relevant domains or in connection to the specially vulnerable situation of some women also appear relevant for this study.

[21] GR 19, para 24 (o).
[22] See chapter 2, section 2.6.1 on page 84.

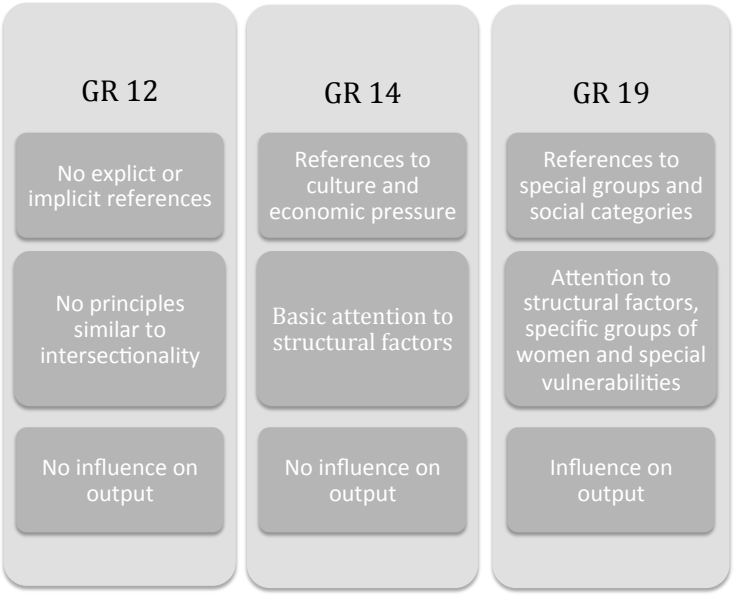


FIGURE 3.1: CEDAW General Recommendations dedicated to VAW

The CEDAW Cee outlined the 'family domain' by means of two recommendations: General Recommendation 21, on Equality in Marriage and Family Relations (GR 21)[23] and General Recommendation 29 on the Economic consequences of marriage, family relations and their dissolution (GR 29).[24] In 1994, the UNGA called for the 'year of the family' and in this occasion, the Committee released GR 21, confirming the connection between the family domain and violence against women and recommending States to comply with GR 19 in order to 'ensure that, in both public and family life, women will be free of gender-based violence that so seriously impedes their rights and freedoms as individuals.' GR 21 connects VAW with the right to freely choose one's partner. It reads:

> There are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security.[25]

[23]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, available at: `http://www.refworld.org/docid/48abd52c0.html`, [accessed 7 December 2014].

[24]UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General recommendation 29, on article 16 of the CEDAW: consequences of marriage, family relations and their dissolution, 26 February 2013 (Advance Unedited Version), available at `http://www2.ohchr.org/english/bodies/cedaw/docs/comments/CEDAW-C-52-WP-1_en.pdf`, [accessed 7 December 2014].

[25]GR 21, footnote 23, para 16.

It also refers to child marriages, and the negative consequences for the health and education of girls[26], and more generally, it connects the right of women to decide the number and spacing of children with their right of access to education, employment and other activities related to their personal development. In this context, GR 21 refers to forced pregnancies as concrete form of violence. Yet GR 21 does not explicitly connect the family domain with domestic violence and partner violence, as GR 19 does. Reference to 'particular groups of people', religion and ethnicity are explicitly made, and consequently, recommendations to provide 'special' protection are also made.

Although GR 19 pointed out that economic dependency may lead women to stay in the relationship and deals with physical and emotional consequences of family violence and abuse, the negative economic effect of family violence and of the separation were not explicitly addressed. GR 21 elaborates to some extent on the consequences of limiting the legal capacity of married women to administer property or make contracts and on the difficulty to acquire property in connection to some forms of marriage, such as de facto unions. Later, the Committee issued GR 29 dealing specifically with the 'economic dimensions of family relations', elaborating on the connection between marriage, poverty, employment and economic well-being. It holds that 'the gendered labour division within the family and family laws affect women's well-being no less than labour market structures and labour laws'[27]. GR 29 also explains that the specific form of the union, be that a civil marriage, a religious marriage, a customary marriage, or a de facto union may have negative economic consequences for women, throughout their duration and after separation if women are not allowed, for instance, to have or keep and administer their own property. Similar to GR 21, GR 29 refers to custom, ethnicity, religion, and family roles, and makes recommendations to cover such 'intersections'.

In addition, the Committee has dedicated general recommendations to two groups of women: Women Migrant Workers (GR 26)[28] and Older Women (GR 27).[29] In both, the Committee elaborates on types of violence particularly affecting these

[26]Ibid, para 36.

[27]GR 29, footnote 24, 1.

[28]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R, available at: `http://www.refworld.org/docid/4a54bc33d.html` [accessed 7 December 2014].

[29]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 27 on older women and protection of their human rights, 16 December

women. These two recommendations not only reflect the core principles of intersectionality, but also explicitly refer to notions such as 'multiple discrimination', 'compounded discrimination' and even 'intersecting forms of discrimination'. Core theoretical principles of intersectionality are visible and reflected in the outcome, that is, the concrete recommendations to States.

The purpose of GR 26 on migrant women workers, says the Committee, is to 'elaborate on the circumstances that contribute to their vulnerability and experiences of sex- and gender-based discrimination as a cause and consequence of the violations of their human rights.'[30] GR 26 explains that the vulnerable position of migrant women depends on the factors compelling migration, the purposes of migration and accompanying tenure of stay, the vulnerability to risk and abuse, and their status in the country to which they have migrated, and their eligibility for citizenship. Women migrant workers thus may be classified into various categories that 'remain fluid and overlapping, and that therefore it is sometimes difficult to draw clear distinctions between the various categories.'[31] Regarding the factors compelling migration, GR 26 explains:

> Various factors, such as globalisation, the wish to seek new opportunities, poverty, gendered cultural practices and gender-based violence in countries of origin, natural disasters or wars and internal military conflicts determine womens migration.[32]

GR 26 makes explicit reference to the 'intersecting forms of discrimination' affecting women migrant workers, who often face not only sex- and gender-based discrimination, but also xenophobia and racism. It also encourages a 'gender perspective' toward migration, and explains that 'discrimination based on race, ethnicity, cultural particularities, nationality, language, religion or other status may be expressed in sex- and gender-specific ways.'[33]

The committee highlighted the special vulnerability of migrant women towards violence throughout the process of migration, that is in the country of origin, transit and destination, and also within the family. In their home countries, women may be recruited for training and subject to financial, physical, sexual or psychological

2010, CEDAW/C/GC/27, available at: `http://www.refworld.org/docid/4ed3528b2.html` [accessed 7 December 2014].

[30]GR 26, footnote 28

[31]Ibid, para. 4

[32]GR 26, footnote 28, para 8.

[33]Ibid, para 14.

abuse, but also, they may have poor access to education, training and reliable information on migration, increasing their vulnerability in relation to employers.[34] By means of GR 26, we see the implicit incorporation of 'migration' to the social categories and factors influencing the domain of employment and violence, particularly in relation to 'exploitation' and 'family violence':

> Women migrant workers are more vulnerable to sexual abuse, sexual harassment and physical violence, especially in sectors where women predominate. Domestic workers are particularly vulnerable to physical and sexual assault, food and sleep deprivation and cruelty by their employers. Sexual harassment of women migrant workers in other work environments, such as on farms or in the industrial sector, is a problem worldwide (see E/CN.4/1998/74/Add.1). Women migrant workers who migrate as spouses of male migrant workers or along with family members face an added risk of domestic violence from their spouses or relatives if they come from a culture that values the submissive role of the women in the family.[35]

One final relevant aspect of GR 26 is that the Committee distinguishes 'subgroups' of women that are at a higher risk of exploitation and abuse, such as undocumented migrants[36] and domestic workers.[37]

The vulnerability of migrant women as elaborated in GR 26 is fully consistent with the core theoretical principles of intersectionality. Firstly, violence against migrant women workers is connected to the multiple inequalities they face. Secondly, there are certain groups of migrant women workers, such us undocumented migrants or domestic workers, located at the intersection of several categories of inequality, that are even more vulnerable to violence. Thirdly, violence against migrant women is connected to structural systems, such as the labour market, globalisation and migration regulation.

This detailed intersectional view of women migrant workers position is reflected in the recommendations to States, particularly preventative ones. In connection to violence, however, recommendations focus on protection. For instance, states should:

1. Promulgate and enforce laws and regulations that include adequate legal remedies and complaints mechanisms, and put in place easily accessible dispute resolution

[34]Ibid, para 10.
[35]GR 26, footnote 28, para. 20.
[36]Ibid, para 4.
[37]Ibid. para. 22

mechanisms, protecting both documented and undocumented women migrant workers from discrimination or sex-based exploitation and abuse;

2. Introduce flexibility into the process of changing employers or sponsors without deportation in cases where workers complain of abuse;

3. Take steps to end the forced seclusion or locking in the homes of women migrant workers, especially those working in domestic service. Police officers should be trained to protect the rights of women migrant workers from such abuses

4. Regulations should be made to allow for the legal stay of a woman who flees her abusive employer or spouse or is fired for complaining about abuse (article 2 (f));

5. Provide temporary shelters for women migrant workers who wish to leave abusive employers, husbands or other relatives and provide facilities for safe accommodation during trial;

6. Ensure that linguistically and culturally appropriate gender-sensitive services are available, including language and skills training programmes, emergency shelters, health-care services, police services, recreational programmes and programmes designed especially for isolated women migrant workers, such as domestic workers and others secluded in the home, in addition to victims of domestic violence.

A very clear intersectional approach to violence is adopted by GR 27 as well.[38] The Committee explains that this Recommendation is the result of their concern 'about the multiple forms of discrimination experienced by older women', and adds that ' age is one of the grounds' on which women may suffer such multiple forms of discrimination.[39] Furthermore, the Committee states that older women 'do not constitute a homogeneous group, but that there is great diversity among these women' and that 'their economic and social situation is dependent on a range of demographic, political, environmental, cultural, social, individual and family factors'.[40]

Furthermore, multiple discrimination affecting older women is addressed as 'multidimensional', and sexual orientation is included as one of the influencing categories:

> The discrimination experienced by older women is often multidimensional, with the age factor compounding other forms of discrimination based on gender, ethnic

[38]GR 27, footnote 29.
[39]Ibid, para 1.
[40]Ibid, para 8.

> origin, disability, poverty levels, sexual orientation and gender identity, migrant status, marital and family status, literacy and other grounds. Older women who are members of minority, ethnic or indigenous groups, internally displaced or stateless often experience a disproportionate degree of discrimination.[41]

It recognises the special situation of older women who are internally displaced, stateless, refugees, asylum seekers and migrant workers[42] and points at some intersections affecting older women more exclusively. GR 27 explains that older women are particularly vulnerable to 'exploitation and abuse, including economic abuse' because their legal capacity is often transferred to lawyers or family members.[43] It also points to another particular situation, since older women often live in rural areas or 'urban slums'.[44]

All core principles of intersectionality as suggested in this thesis are thus clearly visible in GR 27, but one particularly interesting aspect of this GR is that it looks at the way gender constructions affect older women in particular, resulting in gender based violence. This differs from previous Recommendations where gender was considered in terms of social and cultural norms only and where 'intersecting' categories usually lead to specific forms of violence. GR 27 states:

> Gender stereotyping, traditional and customary practices can have harmful impacts on all areas of the lives of older women, in particular those with disabilities, including family relationships, community roles, portrayal in the media, employers attitudes, health care and other service providers, and can result in physical violence as well as psychological, verbal and financial abuse.[45]

Looking at the suggested measures, different types of emerging duties can be derived from the language used by the Committee. GR 27 states two main obligations of States: *an obligation to draft legislation* recognising and prohibiting violence, including domestic, sexual violence and violence in institutional settings, against older women, including those with disabilities and an *obligation to investigate, prosecute and punish all acts of violence* against older women, including those committed as a result of traditional practices and beliefs."[46] Other duties of the State are delineated by the Committee with softer language. It *suggests* to

[41]GR. 27, footnote 29, para 13.
[42]GR. 27, footnote 29, paras 13, 18 and 50.
[43]Ibid, para 27
[44]Ibid, para 12.
[45]Ibid, para 16.
[46]GR 27, footnote 29, para. 37.

pay special attention to the violence suffered by older women in times of armed conflict, and when addressing sexual violence, forced displacement and the conditions of refugees. The Committee thus, seems to consider two types of duties, obligations on the one hand, and recommendations, on the other. These, as we shall see below, are often interconnected to each other.

The latest General Recommendation at the time of writing is GR 30 on women in conflict prevention, conflict and post-conflict situations[47]. 'Conflict' has been considered to increase the risk of violence against women and their general vulnerability in several recommendations and has now clearly become a 'new' domain of policy for States according to the Convention. This recommendation also takes a clear intersectional approach to violence against women. It starts by recognising the heterogeneity of women, having diverse experiences and needs in relation to conflict[48] and confirms that 'discrimination against women is also compounded by intersecting forms of discrimination'[49]

In addition, GR 30 recalls the obligations of States under international humanitarian law to prosecute and punish rape, sexual violence, enslavement, forced prostitution, enforced sterilisation and trafficking in human beings as war crimes, crimes against humanity, torture and genocide. It explains how in connection to trafficking, for instance, conflict situations create 'war-related demand' for womens sexual, economic and military exploitation and that women and girls living in or returning from camps for internally displaced persons are at special risk.

Furthermore, GR 30 recognised that there are some situations which require special attention. For instance, it describes how displaced, refugees and asylum seeker women often face extreme poverty and inequality, leading them 'to exchange sexual favours for money, shelter, food or other goods under circumstances that make them vulnerable to exploitation, violence and HIV infection and other sexually transmitted diseases.'[50] It also points to stateless women, who 'face heightened risks of abuse because they do not enjoy the protection that flows from citizenship and many are undocumented and/or belong to ethnic, religious or linguistic minority populations.'

[47]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30, available at: `http://www.refworld.org/docid/5268d2064.html` [accessed 7 December 2014].

[48]Ibid, para 6.

[49]Ibid, para 7.

[50]Ibid, para 54.

Moreover, GR 30 explains how violence affect some women in particular:

> During and after conflict, specific groups of women and girls are at particular risk of violence, especially sexual violence, such as internally displaced and refugee women; women's human rights defenders; women of diverse caste, ethnic, national or religious identities, or other minorities, who are often attacked as symbolic representatives of their community; widows; and women with disabilities.[51]

All these notions are translated into concrete recommendations to States, among which the most illustrative is perhaps the following:

> Address the specific risks and particular needs of different groups of internally displaced and refugee women who are subjected to multiple and intersecting forms of discrimination, including women with disabilities, older women, girls, widows, women who head households, pregnant women, women living with HIV/AIDS, rural women, indigenous women, women belonging to ethnic, national, sexual or religious minorities, and women human rights defenders.[52]

In sum, these recent General Recommendations show implicit and explicit references to intersectionality, suggesting that the CEDAW Committee is clearly aware of the complexity of VAW. Consequently, detailed measures are recommended. Comparing these three GRs with the proposed 'intersectional' analytical lens, the results show that intersectionality is visible, the principles discussed in the recommendations are coherent with those of intersectionality, and these are taken into account in the final recommendations. These results are illustrated below:

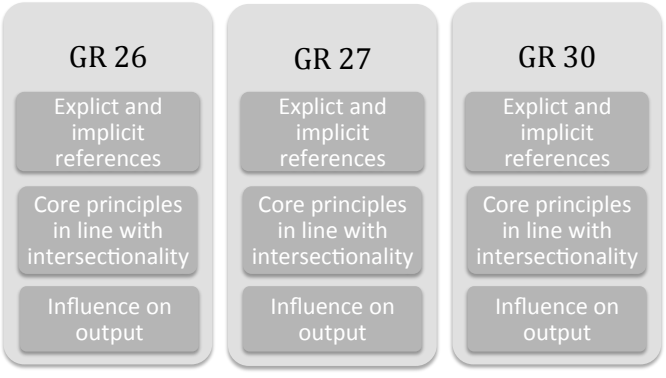


FIGURE 3.2: Recent CEDAW General Recommendations' addressing VAW

[51] GR 30, footnote 47, para 16.
[52] Ibid, para 57(b).

General Recommendations on general obligations of State parties Although specific 'intersectional obligations' emerged from the General Recommendations addressing violence against women analysed so far, some more general obligations appear in General Recommendations addressing the general duties of States parties to CEDAW. Two Recommendations clarify the basic and overarching obligations of States under the Convention: General Recommendation 25 on temporary special measures[53] and GR 28 on the Core Obligations Of States Parties Under Article 2.[54]

GR 25 established that intersecting inequalities affecting women call for temporary special measures:

> Certain groups of women, in addition to suffering from discrimination directed against them because they are women, may also suffer from multiple forms of discrimination based on additional grounds, such as race, ethnic or religious identity, disability, age, class, caste or other factors [...] State Parties may need to take specific temporary special measures to eliminate such multiple forms of discrimination against women and its compounded negative impact on them[55]

The design, implementation and evaluation of temporary special measures should be done with the participation of women in general 'and affected groups of women', in particular.

In GR 28, the Committee highlights specific obligations in relation to VAW falling under article 2 of CEDAW on measures in pursuit of the elimination of discrimination against women. It adopts the most explicit reference to intersectionality of all General Recommendations here examined:

> Intersectionality is a basic concept for understanding the scope of the general obligations of States parties contained in article 2. The discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste and sexual orientation and gender identity. Discrimination on the basis of sex or gender may

[53]UN Committee on the Elimination of Discrimination Against Women (CEDAW), General recommendation No. 25, on article 4, paragraph 1, of the Convention on the Elimination of All Forms of Discrimination against Women, on temporary special measures, 2004, available at: `http://www.refworld.org/docid/453882a7e0.html` [accessed 7 December 2014].

[54]General recommendation No. 28 on the Core Obligations of States Parties Under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/GC/28, 2011.

[55]GR 25, footnote 53, para 12.

> affect women belonging to such groups to a different degree or in different ways to men. *States parties must legally recognise* such intersecting forms of discrimination and their compounded negative impact on the women concerned and *prohibit them.* They also need to *adopt and pursue policies and programmes designed to eliminate such occurrences*, including, where appropriate, temporary special measures.[56]

As discussed in chapter 1, GR 28 explicit adopts and clarifies the content of the tripartite typology of obligations of states: obligation to prevent, protect and fulfil. In addition, it clarifies what an obligation of means or conduct entails.[57] Generally, and in accordance with GR 25, the Committee holds that States parties 'have a due diligence obligation to prevent, investigate, prosecute and punish such acts of gender-based violence.' This general obligation is delineated more in detail in the subsequent paragraphs of the recommendation.

For instance, recommendation 28 seems to make a distinction between 'obligations of States' and 'recommendations to States', according to the language used: it indicates what States "must do" and "should do". It considers that it is *the obligation of States parties* to pursue a policy of eliminating discrimination against women. This is an essential and critical component of a State party's general legal obligation to implement the Convention under the first part of article 2. Elaborating on the characteristics of such a policy, the Committee indicates some key aspects that such policy *must* meet:

- Comprise constitutional and legislative guarantees, amending laws if necessary;
- Include other measures (action plans and monitoring mechanisms);
- Be comprehensive, applicable in public and private spheres;
- Ensure that women, as individuals and groups, have access to information about their rights;
- Devote resources to ensuring that human rights and women's NGOs are well-informed, consulted and able to play an active role in the development of the policy;
- Be 'action and results oriented';
- Be linked to mainstream governmental budgetary processes;
- Creating bodies within the executive branch, taking initiatives, coordinating and overseeing legislation, policies and programmes;

[56] GR 28, para 18.
[57] GR 28, para 10.

- Engage the private sector, including business enterprises, the media, organisations, community groups and individuals.

Furthermore, the general policy adopted by the State needs to implement the 'intersectional approach':

> The policy must identify women within the jurisdiction of the State party (including non-citizen, migrant, refugee, asylum-seeking and stateless women) as the rights-bearers, with particular emphasis on the groups of women who are most marginalised and who may suffer from various forms of intersectional discrimination.[58]

Regarding *how* State parties can comply with such obligations, the Recommendation *suggests*, for example, that they "should" allow the participation and consultation of women, human rights organisations and NGOs; establish indicators, benchmarks and timelines; provide for mechanisms that collect relevant sex-disaggregated data, enable effective monitoring, facilitate continuing evaluation and allow for the revision or supplementation of existing measures and the identification of any new measures that may be appropriate; make sure that the national coordinating bodies are empowered to provide advice and analysis directly to the highest levels of Government; ensure that independent monitoring institutions, such as national human rights institutes or independent women's commissions, are established; etc.

GR 28 further states that, without reparation, the obligation to provide legal remedies to women whose rights under the Convention have been violated is not discharged. Such remedies should include different forms of reparation, such as monetary compensation, restitution, rehabilitation and reinstatement; measures of satisfaction, such as public apologies, public memorials and guarantees of non-repetition. Thus, in relation to the content of reparation as discussed in chapter 1, what is missing in GR 28 is a reference to the 'rectification' instead of mere 'reparation' of a situation which is originally unequal for women.

In sum, in the domain of States' duties, by means of the use of keywords such as 'multiple discrimination' and 'intersectional discrimination', and more explicitly, by 'intersectionality', GR 25 and GR 28 hold that States have a duty to adopt an intersectional perspective as part of the obligations arising under CEDAW.

[58] GR 28, footnote 54, para 26.

These references also capture two of the core principles of intersectionality. Firstly, multiple forms of oppression, multiple discrimination, compounded discrimination, multiple inequalities affect (certain groups of) women. Secondly, certain groups of women, located at the intersection of two or more categories of distinction, posses specific needs. However, looking at the outcome and compared with the previous recommendations, we could argue that GR 25 and GR 28 provide the general basis, for adopting an intersectional approach applicable to discrimination and any form of VAW.

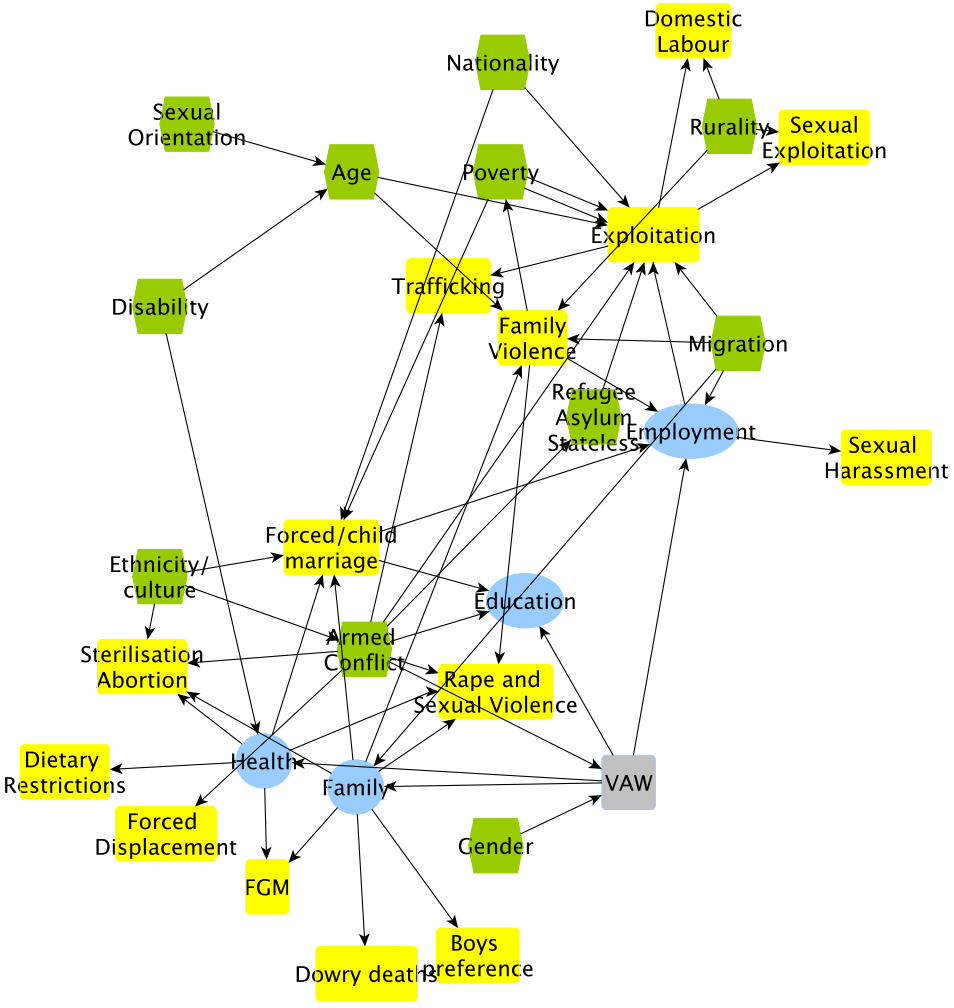


FIGURE 3.3: CEDAW General Recommendations: overview of VAW

In conclusion, considering the CEDAW General Recommendations fully dedicated to violence against women (GR 12, 14 and 19) in combination to those focused to the family domain (GR 21 and 29) and the situation of specific groups of women (GR 26 and 27) with the help of the 'applied intersectionality' lens described in chapter 2, implicit references to intersectionality are revealed, making them visible.

Explicit references to intersectionality are also present in the most recent General Recommendations, particularly in those referring to the general obligations of State parties (GR 25 and 28). Moreover, those implicit and explicit references are reflected in the outcome of the documents by making concrete recommendations.

Nevertheless, there are some domains and some specific types of violence where these influences are more clearly perceived. Figure 3.3 shows that specific social categories and factors (in green) are connected to specific types of violence (in yellow) and policy domains (light blue). If we look at violence against women in general (grey), however, it seems to be directly influenced by gender exclusively. The figure also shows the connections between categories, forms of violence and policy domains.

3.2.1 Interpretation and Adjudication

As introduced in the previous section, one of the tasks of the CEDAW Cee is to review individual complaints against States based on their lack of compliance with CEDAW. The CEDAW-OP[59] allows individual petitions, *individual communications*, binding on ratifying States. These individual communications are key pronouncements on the practical application of CEDAW at domestic level and general State compliance with the Convention.

Several requirements must be met for an individual communication to be admissible. First of all, the Additional Protocol must have been signed and ratified by the State and have entered into force. Secondly, the victim must have exhausted the existing domestic remedies applicable to the situation and finally, the case must not be or have been previously submitted to the review of the Committee or another procedure of international investigation or settlement.[60]

There is an additional aspect about the proceeding which arguably is interesting for this thesis. In the submission form that can be used in order to 'report' a case, available at the CEDAW CEE website[61], several aspects relating to the victim can be communicated to the Committee, such as place of birth and nationality, marital status, number of children, profession and ethnic background, religious affiliation,

[59] CEDAW-OP, footnote 6.
[60] CEDAW-OP, footnote 6, article 4.
[61] Available at: `http://www.ohchr.org/documents/HRBodies/CEDAW/InfoNote_OP_en.doc` [accessed 7 December 2014].

social group, if these are considered to be 'relevant' and potentially important for the case. These pieces of information are not strictly required, and will be provided only if in the interpretation of the person presenting the claim, they are important to the case. The submission form, in fact, is meant as 'guideline', and not of compulsory use.

At the time of writing, individual complaints dealing with domestic violence and rape represent the core work of the Committee on VAW. Although domestic violence is referred to in General Recommendations as 'family violence and abuse', I will refer to it as Intimate Partner Violence (IPV), since they deal with violence where the abuser is the partner or ex-partner of the victims. In subsection 3.2.1 the Committee's views on IPV are analysed, followed by an analysis of cases of rape in Figure 3.2.1, with the aim of clarifying the approach taken toward these two types of violence. References to intersectionality are examined, keeping in mind those references appearing in the GRs discussed above.

Family violence and abuse: Intimate Partner Violence In this section, all individual communications addressing IPV available at the time of writing are included. The first case, *Ms. A. T. v. Hungary*, sets some basic notions. In two cases against Austria regarding the dead of *Sahide Goecke* and *Fatma Yildirim*, the Committee elaborated on detention and the role of the police and judiciary as part of protection policies. These two cases examine the gaps of protection of the Austrian system in a comprehensive and complex manner. In *Kell v. Canada*, the Committee addressed the violence suffered by an indigenous woman at the hands of her partner, connecting IPV with the domain of 'housing'. *V.K. v. Bulgaria* and *Isatou Jallow v. Bulgaria* address connections between migration and IPV.

In 2011 the Committee addressed Communication No. 20/2008, *V.K. v. Bulgaria*[62] where it elaborated on the notion of domestic violence, the influence of gender stereotypes (GRs 19 and 21) and economic aspects of IPV (GR 29). The victim described the controlling behaviour of her husband as demanding submissive behaviour from her, limiting her contact with friends and family, and above all, curtailing her economic independence by not allowing her to work. She argued that her husband denied financial maintenance in order to coerce her and repress her determination to return to work, forcing her to file a judicial application for protective measures and financial maintenance to meet basic family needs. The

[62]Communication No. 20/2008, *V.K. v. Bulgaria*, 25 July 2011, CEDAW/C/49/D/20/2008.

victim's claim thus emphasised psychological, emotional and economic violence rather than severe physical violence.

The Committee noticed that the domestic Courts had focused excessively on physical violence and neglected the victim's emotional and psychological suffering. Moreover, the Courts seem to require two elements in order to classify a situation as domestic violence: the existence of physical violence and the absence of bilateral violence:

> While observing that serious family rows had taken place between the author [*the victim*] and her husband in the presence of the children, repeatedly escalating to physical violence, the Court found that such violence had been exercised by both spouses. Both spouses had submitted medical certificates and had called the police on several occasions. There was no evidence that the author's husband had abused the children, both of whom were fond of him and had no fear of him. The Court also considered that the author had failed to substantiate her claims that her husband had restricted her social contacts, prevented her from taking up employment and neglected his children.[63]

As a consequence of that view of family violence, the domestic Court saw no eminent threat to justify the adoption of a permanent protection order (valid for a year) in favour of the applicant[64], granting only an emergency protection order and the temporary custody of the children, considering that a higher standard of proof was required.[65] The Court considered that all evidence pointed to a situation of bilateral violence:

> the medical certificates and other evidence showed 'a bilateral process of intolerability between the two spouses, within which the distinctions between perpetrator and victim of violence are blurred'.[66]

The Committee found that the definition of domestic violence applied by the Bulgarian Courts was 'overly restrictive' and contrary to the obligations of the State under article 2 of the Convention. Based on articles 2 and 1 of the Convention and GR 19, the Committee explained that:

[63]Ibid, para. 4.8.
[64] *V.K. v. Bulgaria*, paras. 4.6, 7.1.
[65]Ibid, para. 4.5.
[66]Ibidem.

> [G]ender-based violence constituting discrimination does not require a direct and immediate threat to the life or health of the victim. Such violence is not limited to acts that inflict physical harm, but also covers acts that inflict mental or sexual harm or suffering, threats of any such acts, coercion and other deprivations of liberty.[67]

The committee considered the approach adopted by the domestic Court as stereotyped. Such failure to adopt a comprehensive approach to overcoming traditional stereotypes regarding the roles of women in family and society, as required in articles 2 (d) and (f) and 5 (a), contributed to the victim's 'subordinate role during her marriage', as well as to the domestic violence against her.[68] The Committee had 'to determine the level of gender sensitivity applied in the judicial handling of the author's case.' The State's justification that the purpose of the law on protection orders was 'to provide for urgent court interventions rather than to police the cohabitation of partners', reflected a preconceived notion in which domestic violence is to a large extent a private matter falling within the private sphere, not subjected to State control.

In addition, the requirement of physical violence illustrated the stereotyped interpretation of domestic violence. It concluded that 'the refusal of the courts to issue a permanent protection order against the author's husband was based on stereotyped, preconceived and thus discriminatory notions of what constitutes domestic violence.'[69] *V.K. v. Bulgaria* shows that lack of compliance with CEDAW and GRs in relation to IPV may start by the mere definition of it adopted at domestic level, and have immediate consequences in relation to the State duties on prevention and protection from violence. Furthermore, it effectively illustrates the connection between article 5 and domestic violence, elaborated in GR 19 and 21.

In *A.T. v. Hungary*,[70], the Committee considered that lengthy procedures hindered the effectiveness of existing legal remedies. Another shortcoming was that,

[67]Ibid, para. 9.8.
[68]Ibid, para. 3.11.
[69]Ibid, para. 9.12.
[70]Communication No. 2/2003, *A. T. against Hungary*, January 2005. The victim's husband had first refused to move out of the family apartment, and later, after having moved out, he continued to break into the apartment and harass the victim and her children. She had initiated civil proceedings regarding the perpetrator's access to the family home, yet, in spite of possessing several medical certificates confirming the incidents of severe physical violence, the Budapest Regional Court granted permission to the perpetrator to return and make use of the apartment. Furthermore, she requested division of property and injunction orders, all of these rejected by the hungarian judiciary.

regardless of the existence of proceedings for assault and battery, the abuser had never been detained nor were any protection orders issued. For this reason, the Committee considered that the victim had been at risk of irreparable harm since she could not have obtained temporary protection while criminal proceedings were in progress.

One aspect the Committee addressed in almost all cases, is the potential conflict between the woman's rights and the abuser's. In *A.T. v. Hungary*, the hungarian judiciary had decided that banning the abuser from the home would constitute a violation of his right to property, including possession of the common apartment. The Committee, however, decided that women's human rights to life and to physical and mental integrity cannot be superseded by other rights, including the right to property and the right to privacy of the abuser.[71] This recognition of preeminence of the right to life and physical integrity of the victim over certain rights of the perpetrator has been repeated in following cases.

Another aspect made abundantly clear throughout the cases is that passing legislation is essential, yet without effective implementation by means of a comprehensive policy, the state fails to meet their duties under CEDAW. For instance, in *A.T. v. Hungary*, the State claimed to have adopted legislative measures, including restraining orders, and measures directed towards implementation and improvement of the existing resources, such as extending the network of shelters.[72] Several preventative measures were adopted as well, such as awareness raising, training for professionals and collecting data. Yet, the Committee assessed the Hungarian system in its integrity and determined that formal responses, such as passing a law, are not sufficient. The overarching recommendation of the Committee refers to the manner in which the State 'acts' in relation to the violence:

> Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women.

Similarly, reading the cases of *Sahide Goecke*[73] and *Fatma Yildirim*[74] we discover that the Austrian system possessed several legal remedies that could be used in cases of domestic violence. There was a dedicated law in place, regarded by the

[71] Ibid, para. 9.3.
[72] Ibid, 5.7.
[73] Communication No. 5/2005, *Sahide Goekce v. Austria*, August 2007, CEDAW/C/39/D/5/2005.
[74] Communication No. 6/2005, *Fatma Yildirim v. Austria*, October 2007, CEDAW/C/39/D/6/2005.

State as 'a highly effective system to combat domestic violence and establishes a framework for effective cooperation'.[75] One of the existing remedies for domestic violence stemmed from the Security Police act which allowed for police Emergency Barring Orders (EBO).[76] The system was further supplemented by several civil and criminal remedies and by a network of shelters. Yet in both cases, the police had intervened and issued expulsion orders and prohibitions to return for 10 days and had requested the Public Prosecutor to detain the perpetrator for aggravated coercion and for bodily injuries and criminal dangerous threat. The Prosecutor had however refused to arrest the batterer in several occasions in both cases. This refusal was actually supported by the established Austrian procedure and mechanisms, highlighting some shortcomings in the system.

The first shortcoming of the Austrian system related to the impossibility of having ex officio prosecutions in cases of domestic violence. The Austrian Criminal Code provided several possibilities for prosecuting the violence, yet all offences required authorisation from the victim to start prosecution when the perpetrator is a spouse, direct descendant, brother or sister, or relative who lives in the same household. This requirement, in light of the fear of victims to make a formal complaint, left the police with no option but to charge the subject with less severe offences that did not pose such requirement, or not charging at all. In *Sahide Goecke v. Austria*, the complainants considered that placing the burden and responsibility to take steps against a violent husband on the victim, ignores the danger victims face and the controlling power of batterers on victims.[77]

Second, there were certain stereotypes about victims within the Austrian Criminal Procedure, reflecting expectations around victims' behaviour, that affected the prosecution of cases. For instance, after presenting the formal complaint, the prosecutor questions the victim, creating a double scrutiny process that often reveals a seemingly contradicting behaviour of victims of this type of violence. In *Sahide Goecke v. Austria*, the victim showed an ambivalent behaviour through out the

[75] Sahide Goecke v. Austria, footnote 73, para. 4.12.

[76] EBOs in Austria entail the order to leave (Wegweisung) and prohibition to enter the home (Betretungsverbod) and they put an obligation on the police to notify victim support services. EBOs are normally issued for 10 days and are immediately extended to 20 by the application for an injunction order.

[77] *Sahide Goecke v. Austria*, para. 5.3.

whole case, common to victims of domestic violence according to literature.[78] Yet, contradictions in testimonies are problematic for criminal prosecution and pose a challenge for public authorities.[79] Such inconsistencies in the victim's testimony and general behaviour led the Public Prosecutor to believe 'that the threats where a regular feature of the couple's disputes and would not be carried out'[80], resulting in the dropping of the case due to 'insufficient reasons' to prosecute, and eventually, the victim's death. Previously, the Committee had held that requiring that violence must be proved beyond reasonable doubt, placing the burden of proof entirely on the victim, is an 'excessively high' standard of proof, and inconsistent with the Convention.[81]

In addition, in line with the position adopted in *A. T. v. Hungary* , the Committee considered that detention constituted part of the remedies States should provide. In *Sahide Goecke v. Austria* and *Fatma Yildirim v. Austria*, the State argued that it is difficult to assess the risk and determine if detention is not a disproportionate interference in a person's basic rights[82]. In *Sahide Goecke v. Austria*, the combination of the victim's ambivalence and the aggressor lack of criminal record did not suggest an imminent danger of the abuser committing an homicide.[83] Hence, the Court considered that detention could only be justified *ultima ratio*. The lack of detention found grounds on the victim's reactions and behaviour, and the fear of violating the abuser's rights. Conversely, in *Fatma Yildirim v. Austria* the victim showed a very assertive behaviour,[84] yet it was not enough to render the

[78]M. A Dutton 'Understanding women's responses to domestic violence: A redefinition of battered woman syndrome', (1992) *Hofstra Law Review* 21:2, 1191; M. A Dutton, L. A. Goodman and L. Bennett, 'Court-Involved Battered Women's Responses to Violence, The Role of Psychological, Physical, and Sexual Abuse', (1999) *Violence and Victims*, 14:1; Bennett, Goodman and Dutton, 'Systemic Obstacles to the Criminal Prosecution of a Battering Partner A Victim Perspective', (1999) *Journal of Interpersonal Violence*, 14(7):761; R. Bachman and A. L. Coker, 'Police Involvement in Domestic Violence: The Interactive Effects of Victim Injury, Offender's History of Violence, and Race', (1995) *Violence and Victims*, 10:2; K. J. Ferraro, 'Policing woman battering', (1989) *Social Problems*, 36:61-74 .

[79]For instance, the State argued that Mrs. Goecke never made 'a clear decision to free herself and the children' from violence, and that 'effective protection was doomed to fail without her cooperation. See: *Sahide Goecke v. Austria*, footnote 73, para. 4.13. Thus, the Austrian system, and the prosecutor specially, seemed to struggle with the victim's reaction and considered that she 'repeatedly tried to play down the incidents in the interest of preventing the prosecution' of her husband.

[80]Ibid, para. 4.8

[81] *V.K. v. Bulgaria*, para. 9.9.

[82]*Sahide Goecke v. Austria*, para. 8.10

[83]*Sahide Goecke v. Austria*, para.4.14.

[84]After receiving multiple threats from her husband, Mrs. Yildirim had moved out from her apartment with her youngest daughter. She had reported her husband abusive behaviour to the police several times, applied for an injunction order and later filed for divorce.

detention of the abuser either. In justification for the failure, the State emphasised the difficulty in assessing the risk for the victims.[85]

In *Sahide Goecke* and *Fatma Yildirim*, the Committee confirmed that the possibility of 'detention' of alleged perpetrators is crucial in the assessment of the 'effectiveness' of the existing remedies and that the perpetrator's rights cannot supersede women's human rights to life and to physical and mental integrity.[86] In *Sahide Goecke* the Committee considered that the perpetrator's behaviour 'crossed a high threshold of violence of which the Public Prosecutor was aware and thus should not have denied the requests of the police to arrest Mustafa Goekce and detain him'.[87] In *Fatma Yildrim*, the Committee considered that the perpetrator, whose resident permit was dependent on his relationship with Mrs. Yildrim, 'had a lot to lose should his marriage end in divorce', which made him potentially more dangerous.[88] These social and psychological circumstances should have been thoroughly considered and detention granted. Failing to detain him constituted a breach to the State's due diligence obligation to protect the victim.[89]

In general terms, regarding the duties of the States in relation to IPV, the Committee noticed the positive aspects of the Austrian system, having established a comprehensive model to address domestic violence, including legislation, criminal and civil remedies, shelters and counselling, and also, awareness raising and training for practitioners. Yet, the Committee was concerned about the lack of coherence between formal remedies and practice. For instance, the deficiency of the legal remedies existing in the Austrian system was exposed by the death of the victims, in spite of a valid prohibition to carry guns and injunction orders against the abusers. The Committee concluded that a combination of factors indicated that the police 'knew or should have known about the danger the victims were in'.[90] Hence, the Committee pointed out:

[85] In the present case, the offender seem socially integrated (para. 8.14), had no criminal record, did not seem to possess weapons, had been cooperative and also that the victim did not present injuries. The protection of fundamental rights and freedoms of the suspect and in application of the principle of innocence, detention would have been disproportionate (paras 4.6. and 8.13) The claimants challenged this assessment, pointing out that he had made numerous threats and attacks and recalled that he was not an Austrian citizen and he would have lost his residence permit if he were no longer married to the victim.

[86] *Sahide Goecke v. Austria*, para. 12.1.5.

[87] Ibidem.

[88] *Fatma Yildirim v. Austria*, para. 12.4.

[89] *Fatma Yildirim v. Austria*, para. 12.1.5.

[90] Sahide Goecke v. Austria, para. 12.1.4.

> [...] in order for the individual woman victim of domestic violence to enjoy the practical realisation of the principle of equality of men and women and of her human rights and fundamental freedoms, the political will that is expressed in the aforementioned comprehensive system of Austria *must* be supported by State actors, who adhere to the State party's due diligence obligations[91] (my italics).

There is a lack of coherence between the State's 'political will' to prevent and protect women from violence, and what State agents actually do, violating the due diligence obligation of the State. The Committee recommended the State to "vigilantly and in a speedy manner prosecute perpetrators of domestic violence" and to "ensure that criminal and civil remedies are utilised" and called it to strengthen the implementation and monitoring of the existing legislation. The duty to act with due diligence includes 'sanctions' for those who fail to act accordingly.[92]

Regarding aspects that could have increased the vulnerability of the victims, it seems that the Committee has not paid attention to potentially influencing factors consistently. The cases of *Sahide Goecke* and *Fatma Yildirim* v. Austria concern women from Turkish origin, both resulting in their deaths. Whether they were part of a migrant or cultural minority within Austria and whether that had any consequence on the experience of the violence or their access to remedies was not elaborated by the Committee, even when the representatives indicated so.

Nevertheless, the Committee considered that the precarious residence permit of Mr. Yildrim placed an additional burden on the dissolution of the relation. In *A. T. v. Hungary*, no safe place suiting the victim and her children' special needs (her daughter being severely handicapped) was offered. This constituted a flaw of the Hungarian system and a breach of article 5 (a) and 16. The Committee encouraged the provision of a safe home, appropriate child support and legal assistance as well as reparation proportionate to the physical and mental harm and gravity of the violations of the rights of the victim to be paid by the State.

In *Cecilia Kell v. Canada*,[93] the Committee reviewed the situation of an indigenous woman victim of IPV who had been deprived of her home by her husband,[94]

[91] Ibid, para. 12.1.2 and *Fatma Yildirim v. Austria*, footnote 74, para. 12.1.1.

[92] *Fatma Yildirim v. Austria*, para.12.3.(a).

[93] Communication No 19/2008, *Cecilia Kell v. Canada*, February 2012, CEDAW/C/51/D/19/2008.

[94] The claim relates to the ownership, acquisition, management, administration and enjoyment of property, rather than domestic violence. Her husband, who had requested the housing authority to remove her name from the assignment of lease of their house, evicted her after she took employment without his consent although the house was located within Mrs. Kell's community,

paying particular attention to the different aspects increasing her vulnerability. The Committee positioned the condition of victim of domestic violence as central element of the claim. The victim's representative had argued that:

> As an aboriginal person, she experienced racism, and as a woman, she experienced sexism. Both of these aspects of discrimination contributed to a pattern of behaviour that was 'at best bullying and at worst abusive'. Poverty, unemployment, dislocation and homelessness resulting from the theft of her home played a role because she could not afford a lawyer of her own choosing, and at times she could not afford the contribution that [...] Legal Services [...] demanded in order to provide her services.[95]

The Committee thoroughly applied the notions elaborated in GR 28 in this case. It recalled the 'concept of intersectionality' and addressed the 'combined effect' of the gender discrimination in relation to the actions of the housing authority (removing her name from the Lease of property without her consent) and her being a victim of domestic violence (being evicted by her husband) by the Committee. It further found that *an act of intersectional discrimination* had taken place against the victim. Hence, the State party was *obliged* to ensure the effective elimination of such intersectional discrimination.[96]

Arguably, this case confirms that the detection of vulnerability in a concrete case may lead to additional or more detailed duties of the States. For instance, Canada held that the victim had not raise any allegations of domestic violence in her claim and that there was no evidence that she had made the situation of violence known to the housing authorities[97] For this reason, the State argued that they could not have known of such situation since the victim did not pursue the claim judicially. Nevertheless, the Committee highlighted that domestic violence 'had the effect of impairing the exercise of her property rights' as stated in GR 21 and 29, and Canada should have considered the abuse which resulted in the deprivation of property of the victims, as an element inherently connected to the claim, even when no specific criminal complaint or civil claim was made in relation to the domestic violence.[98] Furthermore, the Committee recalled the due diligence obligation of

and it was her indigenous status which allowed them to apply for the house. Regardless, her name was taken from the lease and the husband took full possession of the house.

[95] *Kell v. Canada*, para. 9.3.

[96] Ibidem.

[97] *Kell v. Canada*, para. 8.11.

[98] *Kell v. Canada*, para. 10.2.

States 'to protect women, including against gender-based violence by private actors; investigate the crime; punish the perpetrator; and provide compensation', as stated in GR 19,[99] indicating that Canada, once there were suspicion about the violence, should have actively investigated the case and provided compensation.

At the time of writing, the most recent view on IPV relate to Communication No. 32/2011, submitted by *Isatou Jallow v. Bulgaria.*[100] This case also shows how certain duties of the State are connected to aspects increasing vulnerability. It constitutes another opportunity to analyse the Committee's approach to intersecting elements creating vulnerability to violence and illustrates the impact of migration on IPV. It concerns an immigrant woman, Miss Jallow, who shortly after moving to Bulgaria, experienced several problems, including sexual violence.

Ms. Jallow argued that her lack of knowledge of the language and the Bulgarian system prevented her from addressing institutions directly unless she secured an interpreter at her own expense.[101] The Committee considered that by not hearing her the State failed to act with due diligence, to provide her with effective protection and to take into account her vulnerable position as illiterate migrant woman without a command of Bulgarian or relatives in the State party.[102] In connection to this, the Committee again recalled the obligations of State parties as stated in GR 26 and 28:

> To take measures to ensure that women victims of domestic violence, in particular migrant women, have effective access to services related to protection against domestic violence and to justice, including interpretation or translation of documents, and that the manner in which domestic courts apply the law is consistent with the State party's obligations under the Convention.[103]

Hence in this case, although the Bulgarian system had several remedies victims of violence could use, in practice Ms. Jallow could not access them due to her limited command of the language and lack of knowledge on the existing resources. On the contrary, her husband, a Bulgarian national who arguably had better resources to confront the woman, such as speaking the language, knowing the legal system in place, and possibly, having a social and family network, was able to request

[99] *Kell v. Canada*, para. 7.4.
[100] Communication No. 32/2011, *Isatou Jallow v. Bulgaria*, July 2012, CEDAW/C/52/D/32/2011.
[101] *Jallow v. Bulgaria*, para. 3.4.
[102] Jallow v. Bulgaria, para. 7.5.
[103] *Jallow v. Bulgaria*, para. 8.8.2.(a).

measures which resulted in the eviction of the victim and a prohibition of contact with her daughter, regardless of the recent history indicating his abuse of the victim and possibly, of their child.[104] His success in securing such protecting measures confirm that the effectiveness of the remedies is indeed relative, and will depend on prior advantages and disadvantages of the person requesting them.

In comparison with the analysis of the case of Ms. Kell, the Committee does not explicitly mention the 'compounded nature' of the victim's vulnerability and no specific reference to intersectionality or intersecting discrimination is found. Yet, the Committee managed to identify her migrant status and lack of 'cognisance' as disadvantages in her attempt to look for protection from violence. The lack of protection, or more specifically, the efficiency of the remedies was therefore seen as directly affected. The Bulgarian system appeared at first sight as a comprehensive system, with the possibility of issuing different types of protection orders, a system of shelters, etc, and without taking migration and language comment into account, the gaps in the system would probably not had been captured. This analysis of the Committee is, arguably, a step forward from the analysis of the effects of migrant status in *V.K. v. Bulgaria*.

The Committee did not loose track of migration and language barriers, even when the victim had put emphasis on gender, or the lack of gender specificity of the law, as the main factor leading to the issuing of protection orders at the request of her husband and not when she requested it. Ms. Jallow claimed that although women are most affected by domestic violence, no special protective measures exist. She argued that since the laws on Protection against Domestic Violence and the Child Protection Act are gender neutral, the State party was in violation of article 2 (f) and (g). Thus, in this particular communication, the representatives chose to highlight 'gender', and the gender neutral nature of the law, and only secondarily, the specific factor of migration contributing to the case in particular. Regardless of this, the Committee broadened its focus to include migration and other relevant aspects.

[104]In this case, Ms. Jallow's husband had made several claims regarding the behaviour of the applicant towards their daughter, such as requesting the intervention of Child Services in connection to her breastfeeding and later requesting and being granted an emergency protection order for his daughter and himself against Ms. Jallow. She was consequently deprived from any contact with the child for several months. After the rejection of a permanent protection order, the husband further requested full custody of the child after filing for divorce.

To date, the Committee has not elaborated on the special implications of immigrant status in the vulnerability to IPV in such detail as to meet the level of attention of GR 26. In *V.K. v. Bulgaria*, the family had moved to Poland due to the husband's job, and in *Jallow v. Bulgaria*, Miss Jallow moved to Bulgaria to meet her Bulgarian husband, The Committee, although recognising the limitations regarding language, general knowledge and lack of social networks, did not elaborate on elements which might be of importance. For instance, in *V.K. v Bulgaria*, it completely skipped any analysis of policies during the victim's stay in Poland, including training and job search support In relation to Ms. Jallow, the Committee did not inquire on the elements convincing her to migrate to Bulgaria, such as the conditions in her country. The relationship with the husband, and whether there was or not a controlling behaviour and which elements influence such relation are very scarcely mentioned.

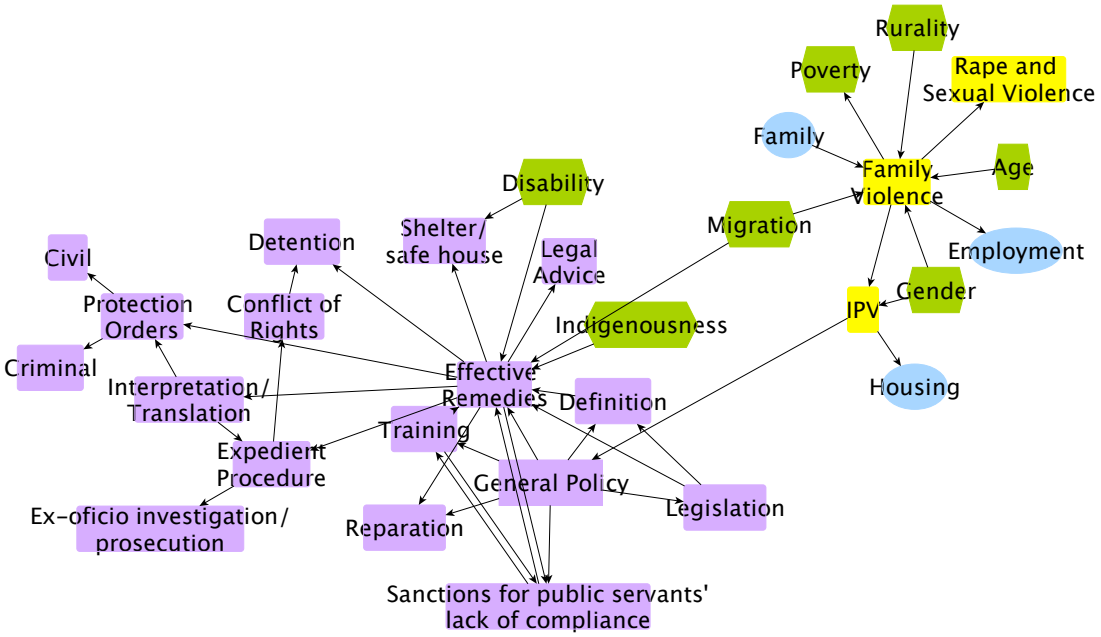


FIGURE 3.4: CEDAW Committee: IPV

Taking into consideration the Committee's views and the General Recommendations discussed in the previous section, a set of obligations in relation to IPV can be identified. Figure 3.4 provides an illustration. Regarding the policy domains included in the figure, in blue, one is directly mentioned by the Views ('housing' in *Kell vs. Canada*) in combination with those included in the General Recommendations. The social categories considered in the Views as influencing on the cases are shown in green, leading to concrete recommendations, showing in lilac, in relation to certain specific aspects of the general policy on IPV mandated on States.

Regarding the obligations of States, the views narrow down the recommendations to the concrete situation of the State parties, thus a much more schematic outline appears, including only the most significant elements to be included.

Sexual Violence and Rape In *Karen Tayag Vertido v. The Philippines*[105], the Committee elaborates on a number of stereotypes common to cases of rape and rape victims.[106] Miss Vertido argued that the principles applied to her criminal case by the domestic Court, resulting in an acquittal, revealed gender stereotypes and myths. The domestic Court had supported the following principles:

- it is easy to make an accusation of rape; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
- in view of the intrinsic nature of the crime of rape, in which only two persons are usually involved, the testimony of the complainant must be scrutinised with extreme caution; and
- the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defence.

Furthermore, the domestic Court 'did not understand why the author had not escaped when she had so many opportunities to do so.' It further found the allegations of the victim to be implausible, and considered that should the victim really have fought off the accused when he was raping her, the accused would have been unable to ejaculate, in particular bearing in mind that he was already in his sixties. The Court therefore concluded that the evidence presented by the prosecution, in particular the testimony of the victim, 'left too many doubts' as 'to achieve the moral certainty necessary to merit a conviction.'

The victim argued that the acquittal of the suspect was discriminatory within the meaning of article 1 CEDAW in relation to GR 19, since it was grounded in gender-based myths and misconceptions about rape and rape victims,[107] and in violation of article 5 (a) of the Convention, which requires States parties 'to modify the social and cultural patterns of conduct of men and women, with a

[105] *Karen Tayag Vertido v The Philippines* (18/08), CEDAW/C/46/D/18/2008 (2010).

[106] For a detailed account on this case, see: S. Cusack and A. S. H. Timmer, 'Gender stereotyping in rape cases: the CEDAW Committee's decision in Vertido v. The Philippines', (2011) *Human Rights Law Review*, 11(2):329-342.

[107] *Vertido v. The Philippines*, para. 3.3.

view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women'.[108] She explained that myths, misconceptions and discriminatory assumptions in Filipino jurisprudence place rape victims at a legal disadvantage and significantly reduce their chances of obtaining redress for the violation they suffered.[109] She enumerated the following:

- A rape victim must try to escape at every opportunity;
- To be raped by means of intimidation (as opposite to 'by force'), the victim must be timid or easily cowed;
- To conclude that a rape occurred by means of threat, there must be clear evidence of a direct threat;
- If the accused and the victim are 'more than nodding acquaintances', sex is consensual ('sweetheart defence');
- when a rape victim reacts to the assault by resisting the attack and also by cowering in submission because of fear, it is problematic. Specially because Courts often impose a standard of "normal" behaviour and discriminates against those who do not conform to these standards;
- The rape victim could not have resisted the sexual attack if the accused were able to proceed to ejaculation;
- It is unbelievable that a man in his sixties would be capable of rape.

The Committee found that the notion that 'an accusation for rape can be made with facility', reveals gender bias. Furthermore, the Committee noted that the judge had concrete expectations about how the victim should have reacted before, during and after the rape, owing to the circumstances and her character and personality. The judgement concluded that the victim had a contradictory attitude by reacting both with resistance at one time and submission at another time, and consider this as a problem. The assessment of the credibility of the victim's version of events was influenced by a number of stereotypes, not falling under what was expected from a rational and "ideal victim" or what the judge considered to be the rational and ideal response of a woman in a rape situation

[108]Ibid, para 3.4.
[109]Ibid. 3.9.

Although in the case the Committee fails to provide a definition of rape, it reminds that its essential element was lack of consent[110] and makes a series of recommendations which will influence directly on the elaboration of such definitions. Considering the Filipino decision, the Committee recommended the State to:

> Ensure that all legal procedures in cases involving crimes of rape and other sexual offences are impartial and fair, and not affected by prejudices or stereotypical gender notions.

Four main measures are recommended in order to achieve those impartial, fair and free from stereotypes procedures:

1. Review of the definition of rape in the legislation so as to place the lack of consent at its centre;
2. Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration;
3. Minimise secondary victimisation in proceedings by enacting a definition of sexual assault that either requires the existence of 'unequivocal and voluntary agreement' or requires that the act take place in 'coercive circumstances';
4. Appropriate training for judges, lawyers, law enforcement officers and medical personnel in understanding crimes of rape and other sexual offences in a gender-sensitive manner so as to avoid revictimisation.

These recommended measures will improve the protection of victims of rape, and they all boiled down to adopting a definition of rape and sexual assault which is in line with the aim of protecting women at substantial and procedural level.

In *V.V.P. v. Bulgaria*[111], the Committee addressed some aspects connected to the effective prosecution and punishment of the violence, recommending the state to repeal the legal provision existing in domestic law which eliminates the punishment of perpetrators of rape if they marry the victim. Compensation was also an

[110] *Vertido v. The Philippines*, para. 8.7.

[111] *V.V.P. v. Bulgaria*. CEDAW/C/53/D/31/2011Communication No. 31/2011. The Case concerns the sexual abuse of a child, the failure to provide compensation and the lack of specialised support services, resulting in her psychological and emotional damage. In this case, the Committee makes one more clarification which should be considered when defining sexual abuse and rape. It requested the State to ensure that all acts of sexual violence against women and girls, especially rape, are defined in line with international standards and effectively investigated and that perpetrators are prosecuted and sentenced commensurately with the gravity of their crimes.

important aspect of the case, and consequently, it called on the State to provide an adequate mechanism for provision of compensation for moral damages and to provide legal aid for the execution of the judgements awarding compensation.

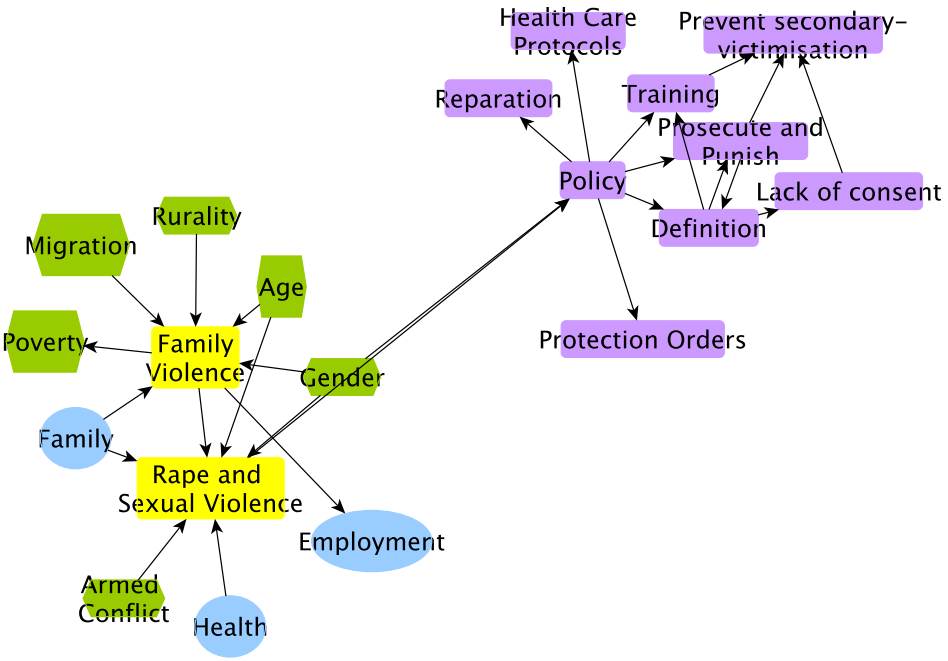


FIGURE 3.5: CEDAW Committee: sexual violence and rape

Furthermore, the Committee made a number of recommendations which expand on the protection measures. It held that States parties should ensure the enactment and effective enforcement of laws and the formulation of policies, including health-care protocols and hospital procedures to address violence against women and abuse of girl children and the provision of appropriate health services and also, to amend the criminal legislation to ensure effective protection from re-victimisation of the victims after the perpetrators are released from custody, including through the possibility of obtaining protection and/or restriction orders against perpetrators.

In sum, all aspects discussed by the Committee in relation to sexual violence and rape in light of the General Recommendations and views are illustrated in Figure 3.5. Several social categories, in green, that were included in General Recommendations as influencing rape and sexual violence are not reflected in individual communications. The influence of gender and age has been addressed, and this has also resulted in concrete recommendations, showing in lilac. The connection to family violence, however, has still to be developed in future cases,

so these results can only partially be extrapolated to sexual violence occurring in such context.

3.2.2 Final observations on CEDAW

After this analysis, some questions arise on whether the work of the Committee relating to issuing general recommendations and views on individual cases, can be regarded as forming one consistent whole or whether significant difference exist among these. The analysis of the GRs has shown a progressive and still evolving approach to violence against women and intimate partner violence. For instance, factors creating vulnerability, multiple, compound and multidimensional discrimination or the adoption of an intersectional approach towards violence have been clearly recognised in GR. However, comparing general recommendations to individual communications, the Committee has not always fully transposed the principles and notions elaborated in the general recommendations to the individual views. References to these elements are not always consistently made and remain the exception, even when the specifics of some cases at hand seem to offer fertile ground to do so. This can be the result of the limited freedom that the Committee has in relation to views, having to address the concrete cases that are submitted.

Regarding the phenomenon of IPV in particular, notions found in GRs appear quite comprehensive. In this respect, IPV includes the most commonly mentioned manifestations of violence, namely physical, sexual, psychological and economic violence. The views of the Committee on individual communications confirm this as well. Regarding the definition of violence, the views reveal that IPV also includes cases which are often considered as 'bidirectional', where the victim does not necessarily remain passive but can act in a challenging or defensive manner. Furthermore, it is clear that the victims' response to the violence, for instance, separating from or staying with the batterer, is no excuse for State's inaction and lack of protection.

Regarding the duties of States, technically speaking, the Committee 'interprets' CEDAW both in the General Recommendations and Views on individual communications, recalling obligations previously included in the Convention and clarifying them. In doing so, some measures appear as constitutive part of the obligations of States, such as the adoption of laws prohibiting the violence. Yet the Committee

has been clear to state that, in addition to legal measures, effective implementation is needed, calling for a comprehensive policy. The notion of effective remedies is adapted in the Views to the specific case concerning the individual communication, illustrating what such remedies must include.

Due diligence appears as a notion connected to the application and implementation of legal measures. In this respect, the Committee has highlighted that due diligence is not met when there is a gap between the law and the practice. The 'political will' of the State, inherent to compliance, must be supported by the attitudes of state agents dealing with the cases of violence. General Recommendations and individual communications suggest that due diligence is connected to the type or extent of duties arising for the states, and these are determined in relation to the specific individual communication. Whether the tendency is trying to 'define' its content or using it as 'interpretative tool', as discussed in chapter 1, section 1.6, is still unclear.

The views on individual communications do not create enforceable obligations for States, only recommendations. They include numerous measures, some on the specific type of violence at hand, and some on violence against women in general. Some recommendations, obligations and rights are almost routinely mentioned, while concrete measures are the exception. A basic list of measures includes:

- Definitions of domestic violence need to include not only physical violence, but also psychological violence and economic violence. Definitions of sexual violence should revolve around consent instead of force, and should furthermore comply with international standards;
- Interim measures should be provided for the protection of the victims;
- Protection orders are one of the remedies that should be possible to request, and no higher threshold should be put on the victim;
- Detention must be possible, yet it cannot be dependent on the behaviour of the victim, and that danger posed by the abuser needs to be assessed not merely by looking at formal requirements, but by taking different elements in consideration, such as the immigrant status of the abuser
- Compensations should be provided, also in cases where no material or physical damage occurs;

- The investigation and prosecution of cases cannot be dependent on the acts of the victim, and prejudiced views on victims cannot interfere with the investigation and prosecution of the cases;

- Services, particularly shelters, suiting specific needs of victims, need to be provided.

Finally, the CEDAW Committee has recognised intersectionality explicitly and implicitly, adopting a perspective on VAW that includes notions and principles which are coherent with the core principles of intersectionality. It has recognised several social categories, that in addition to gender, place women in a more vulnerable situation to violence. It has recognised the interconnection between them by referring to 'multiple, compound and intersecting discrimination', and has recognised the multi-dimensional character of such discrimination. Several policy domains have been considered as connected to the violence, some of them originally included in CEDAW, such as the family, employment, health, education and rurality, and new domains have been included, such as armed conflict. In addition, migration has been discussed sometimes as a social category ('migrant women'), and sometimes as a phenomenon ('migration'), suggesting a possible new 'policy domain'. All of these domains and social categories intersect at different points in relation to specific forms of violence.

3.3 The Declaration for the Elimination of Violence against Women

The Declaration on the Elimination of Violence against Women (DEVAW)[112] was adopted by resolution of the General Assembly in 1993. This declaration remains to date the only United Nations Declaration addressing VAW specifically. DEVAW states that violence against women is an obstacle to the achievement of equality, development and peace. It constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. The importance of the subordinated position of women to creation of violence is highlighted:

[112]UN General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104, available at: `http://www.refworld.org/docid/3b00f25d2c.html` [accessed 7 December 2014].

> Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.[113]

The Declaration points to some key areas requiring the attention of States, such as elaborating a clear and comprehensive definition of VAW which includes a broad range of acts taking place within the household, understood as the private sphere, in the community and when perpetrated or condoned by State agents:

> Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[114]

From the combination of these two references, we can argue that gender is proposed as a structural element, socially constructed, and central to the violence.

Intersectionality is not explicitly present in DEVAW, although it incorporates some additional categories. However, unlike with gender, these categories are not presented as structural or socially constructed. DEVAW refers to certain groups of women who are specially vulnerable, such as women belonging to minority groups, indigenous women, refugee women, migrant women, women living in rural or remote communities, destitute women, women in institutions or in detention, female children, women with disabilities, elderly women and women in situations of armed conflict, who have to be taken into consideration when designing policies. Thus, some of the keywords are found, (vulnerable groups + grounds), yet no further references are found in relation to 'multiple disadvantaged, most vulnerable women, multiple oppression', multiple discrimination, compounded discrimination, double discrimination or 'intersectional discrimination'. Regarding implicit intersectionality, thus, only one of the core principles is reflected: groups of women located at the intersection of two or more social categories of distinction, that are vulnerable to violence and/or that posses specific needs as the result of the violence.

[113] Ibid, preamble, paragraph 6.
[114] DEVAW, footnote 112, article 1.

Regarding the duties of States, DEVAW makes two main recommendations: *to condemn violence against women without invoking any custom, tradition or religious consideration to avoid their obligations* and, similarly to GR 28, *to pursue without delay a policy of eliminating such violence.*[115] The Declaration makes several other suggestions to States that can be grouped into 'formal measures', 'measures for the implementation of protection', 'measures on provision of services', 'preventative measures' and 'measures for further improvement of compliance'.

In the pursuit of a policy for the elimination of violence against women, some recommended measures aiming at the realisation of protection, are rather straight forward and cannot be easily ignored by States despite using conditional language. States "should":

- Refrain from engaging in violence against women;[116]
- Exercise due diligence to prevent, investigate and punish VAW, whether those acts are perpetrated by the State or by private persons;[117]
- Include in government budgets adequate resources for activities;[118]
- Adopt measures directed towards the elimination of violence against women who are especially vulnerable to violence;[119]
- Provide access to justice.[120]

States are expected to include information on the adoption of these measures in their periodic reports to all UN treaty organs.[121] States are also recommended to "develop sanctions in legislation to punish and redress the wrongs caused to women subjected to violence"[122] and expected to recognise the important role of the women's movement and NGOs world wide in raising awareness and alleviating the problem of violence against women and to encourage regional organisations to include the elimination of violence against women in their programmes.[123]

[115]Ibid, art. 4, first part.
[116]Ibid, art. 4(b).
[117]Ibid, art.4(c).
[118]Ibid, art. 4(h).
[119]DEVAW, footnote 112 art. 4 (l).
[120]Ibid, art. 4(d).
[121]Ibid, art. 4(m).
[122]Ibid, art. 4(d).
[123]Ibid, art. 4 (o).

Some of the recommendations found in the Declaration seem to indicate aspects which have caused disagreement among States given the use of conditional language in addition to waivers such as 'if appropriate', 'if needed' or 'according to domestic law'. One such a case seems to have been the provision of services for victims and their children, which reads:

> States should...work to ensure, to the maximum extent feasible in the light of their available resources and, where needed, within the framework of international co-operation, that women subjected to violence and, where appropriate, their children have specialised assistance.[124]

DEVAW recommends developing preventive approaches and adopting all measures (legal, political, administrative and cultural) promoting protection.[125] Secondary victimisation should also be avoided, calling for gender sensitive laws[126] and measures to ensure that law enforcement officers and public officials responsible for implementing policies to prevent, investigate and punish violence against women receive training to 'sensitise' them.[127] Moreover, in order to prevent violence and according to the underlying notions of gender inequality, States should "adopt measures to modify social and cultural patterns of conduct and to eliminate prejudices, customary practices and all other practices based on the idea of the inferiority or superiority of either of the sexes and on stereotyped roles for men and women".[128]

Other measures directed to improve compliance and implementation seem to be the following:

- Promoting research, collecting data and compiling statistics, those statistics and findings of the research will be made public;[129]
- Encouraging the development of appropriate guidelines to assist in the implementation;[130]
- Facilitating and enhancing the work of the women's movement and NGOs.[131]

[124]Ibid, art. 4(g).
[125]Ibid, art. 4 (f).
[126]Ibid, art. 4 (f).
[127]Ibid, art. 4 (i).
[128]Ibid, art. 4 (j).
[129]DEVAW, footnote 112, art. 4 (k).
[130]Ibid, art. 4 (n).
[131]Ibid, art. 4 (p).

DEVAW refers to some measures as something 'to be considered', with no concrete expectation on their adoption, suggesting they are more a *good practice* than a concrete requirement. This is the case of some formal measures, such as asking States to 'consider' ratifying CEDAW and withdrawing any incompatible reservations[132], and adopting national plans of action in co-operation with NGOs if possible.[133]

Contemporary with GR 19 and the Vienna Conference, DEVAW follows almost the same principles, yet giving the international community a bigger role in the elimination of violence. This supports the idea that soft law mechanisms address a variety of actors, needed for responding to multi-level wrongs such as VAW, as discussed in section 1.3 of chapter 1. Having said that, it is difficult to appreciate today how influential DEVAW has been in comparison to the CEDAW General Recommendations for two reasons. Firstly, General Recommendations remain in continuous elaboration, and secondly, DEVAW's normative character, that is a declaration yet not legally binding or enforceable, was agreed as such by States from the very beginning.

Nevertheless, the UN General Assembly has continued to adopt resolutions on VAW almost routinely, stressing the recommendations made in the Declaration and elaborating on new ones. In this sense, it can be argued that DEVAW has continued to be 'updated' almost yearly. Also, the legal value of DEVAW arguably increases when taken together with the whole body of UN GA resolutions. These aspects will be discussed in the next section.

The general overview of DEVAW, including the role of gender and additional categories in relation to VAW is illustrated in Figure 3.6. In green, it is possible to see how the notion of 'special vulnerability' is the connecting point between social categories and recommended measures, showing in lilac.

[132]Ibid, art. 4 (a).
[133]Ibid, art. 4 (e).

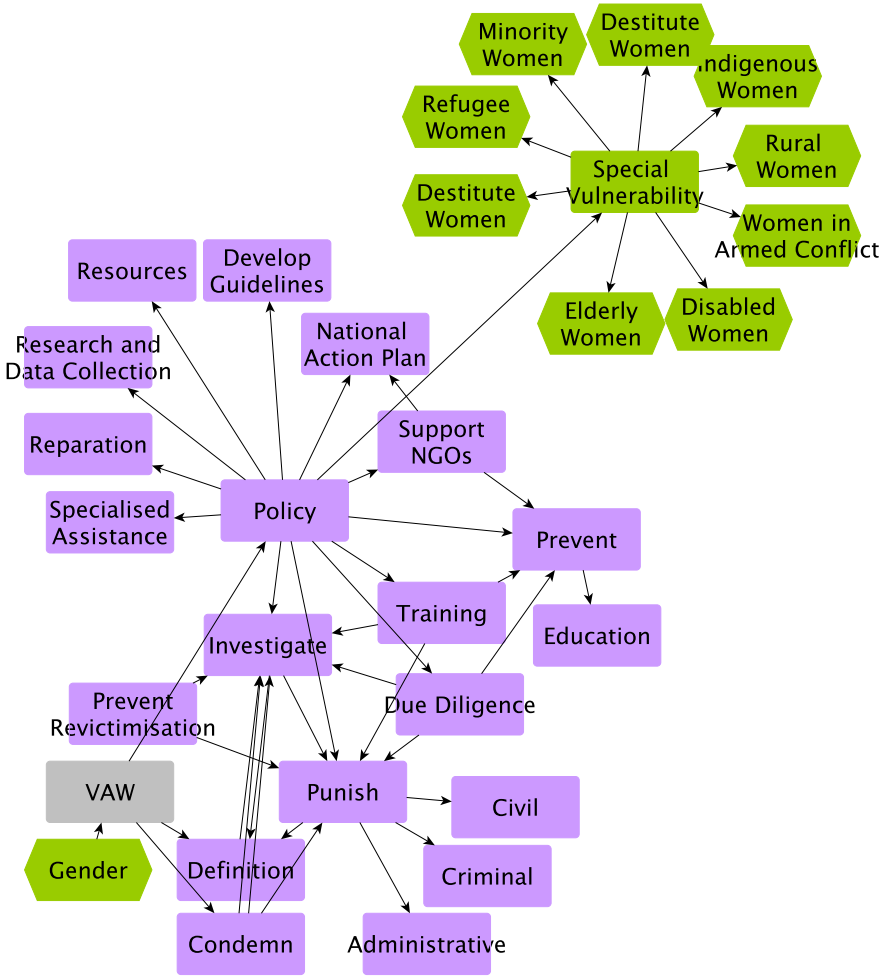


FIGURE 3.6: DEVAW

3.4 The United Nations General Assembly' Resolutions

This section is dedicated to examining the resolutions on violence against women adopted by the United Nations General Assembly (UN GA). I focus my analysis primarily on resolutions addressing violence against women in general, and in second place, I address specific forms of VAW. I looked for references to the intersectional approach, both explicitly and implicitly, and I have tried to include those recommended measures which appear as more often supported, repeated or reaffirmed.[134]

[134] I have analysed the resolutions from 1945 until 2013, yet given the great number of resolutions issued annually, it is possible that some have escaped my attention.

The UN GA slowly started to focus on VAW in 1985, adopting many resolutions dealing with the issue since then. The initial approach shows a strong criminal perspective, rather than a human rights approach. For instance, the resolution initiating the series of resolutions focusing explicitly and specifically on VAW was resolution 52/86 from 1998 on 'crime prevention and criminal justice measures to eliminate violence against women'.[135] This resolution encourages the adoption of a 'gender perspective' in the criminal system and called on States to review and modify laws and practices which may be contrary to this purpose, hindering women's access to justice. Subsequent resolutions focusing on violence agains women in general explicitly included 'the girl child',[136] yet gender remained the main social category influencing the violence.

An intersectional approach can be observed only since 2006. Resolution 61/143 called for the 'intensification of efforts to eliminate all forms of violence against women', explicitly mentioned 'women who need special attention', such as 'women belonging to minority groups, including those based on nationality, ethnicity, religion or language, indigenous women, migrant women, stateless women, women living in underdeveloped, rural or remote communities, homeless women, women in institutions or in detention, women with disabilities, elderly women, widows and women who are otherwise discriminated against'.[137] It also recognised that 'women and girls in situations of armed conflict, post-conflict settings and refugee and internally displaced' are at a greater risk of violence. The resolution, therefore, recommended states to develop policies which take into account the 'intersection of gender with other factors'. However, clear references to an intersectional approach are not alway consistent. For instance, I found only one resolution, A/RES/65/228, repeating this 'intersectional approach'.

Nevertheless, the awareness of the General Assembly regarding the particular position of certain groups of women is, in fact, very clear. Specific groups of women

[135]UN General Assembly, Crime prevention and criminal justice measures to eliminate violence against women: resolution adopted by the General Assembly, 2 February 1998, A/RES/52/86.

[136]See: A/RES/57/181 and A/RES/59/167 on Elimination of all forms of violence against women, including crimes identified in the outcome document of the twenty-third special session of the General Assembly, entitled 'Women 2000: gender equality, development and peace for the twenty-first century'.

[137]UN General Assembly, Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly, 30 January 2007, A/RES/61/143, para. 8 (f).

have often deserved particular attention of the UNGA, calling for dedicated resolutions: refugee women,[138] women living in rural areas,[139] elderly women[140] and the girl child.[141] In addition, migrant women workers would early on become a group of special concern in relation to violence.[142] A clear intersectional approach is present in resolutions dedicated to violence against women migrant workers. They refer to 'the intersection of gender, age, class and ethnic discrimination and stereotypes' that compound the discrimination faced by women migrant workers, and recommend measures that take this into account.[143]

Moreover, there are consistent references to the need of approaching violence against women 'holistically', that is, recognising linkages between VAW and girls and other issues, 'such as HIV/AIDS, poverty eradication, food security, peace and security, humanitarian assistance, education, health and crime prevention.'[144] The role of poverty in creating a more vulnerable position for women is, indeed, stressed in all resolutions adopted in relation to VAW in general.

The prevention of violence and the protection and provision of support for women, are adopted in combination with a punitive approach in relation to specific forms of violence. However, references to an intersectional approach are much more dependent on the type of violence analysed, and generally speaking, the intersectional approach is more 'diluted' and less perceptible, often showing only in connection to references to 'vulnerable groups' or special 'risks'.

Domestic violence was the first specific form of violence to be addressed by the UN GA in 1985[145] and again in 1990.[146] In first instance, despite considering

[138]UN General Assembly, A/RES 34/161 (1979) on Women Refugees and A/RES 35/135 (1980) Refugee Women and Children.

[139]See references above.

[140]UN General Assembly, A/RES 44/76 (1989) on Elderly Women; A/RES 49/162 (1994) on Integration of Older Women in Development; A/RES 57/177 (2002) on the Situation of Older Women in Society.

[141]UN General Assembly, A/RES60/141 (2005) and A/RES 66/140 (2011) on the Girl Child and A/RES 66/170 declaring the International Year of the Girl Child.

[142]UN General Assembly, A/RES 47/96 (1992); A/RES 48/110 (1993); A/RES 51/65 (1996); A/RES 52/97 (1997); A/RES 54/138 (1999); A/RES 56/131 (2001); A/RES 58/143 (2003); A/RES 60/139 (2005); A/RES 64/139 (2009) and A/RES 66/128 (2011) on Violence Against Women Migrant Workers.

[143]See: A/RES 66/128 (2011) on Violence Against Women Migrant Workers.

[144]See: UN General Assembly, Intensification of efforts to eliminate all forms of violence against women: resolution adopted by the General Assembly, 30 January 2009, A/RES/63/155; Resolution A/RES/65/187 adopted on 23 February 2011; Resolution A/RES/67/144 adopted in 27 February 2013.

[145]UN General Assembly, Domestic violence: resolution adopted by the General Assembly, 29 November 1985, A/RES/40/36.

[146]UN General Assembly, Domestic violence: 14 December 1990, A/RES/45/114.

women battering as a critical problem, these resolutions did not focus on women, but on the family. Exclusive focus on women came with a third resolution. This resolution adopted a mainly criminal approach, highlighting gender as the basis of the violence but recognising that it is necessary to consider age (elderly women and girls) and disability. Furthermore, domestic violence is stressed as a 'universal' form of violence, affecting all women.[147] It is only then that a shift in the approach is perceived, addressing it as a violation of rights instead of as a mere crime.[148]

Although rape has been the focus of only one resolution so far,[149] during the 48th session in 1993, a resolution addressing rape and sexual abuse of women in the conflict in the Ex-Yugoslavia[150] was passed for the first time, and repeated until the International Tribunal for the Ex-Yugoslavia was implemented and started investigating and prosecuting such cases.[151] Similarly, support for victims of sexual abuse of the Rwandan Genocide was also the focus of several resolutions. Other resolutions determined that sexual violence crimes must be excluded from amnesty provisions in the context of conflict resolution processes.[152] These resolutions recognised the use of rape as a tool for 'ethnic cleansing' and that muslim women were specific targets, yet there are no references to an intersectional approach. Although the focus lies on the investigation, prosecution and punishment of the crimes, the provision of assistance for victims is also mentioned. In relation to rape during peace time, a comprehensive approach is called for, yet no references to an intersectional approach is found either.

The General Assembly paid much attention to practices harmful to women.[153] Considering the title of the resolutions it appears that the view on these forms

[147]UN General Assembly, A/RES 58/147 (2003) on the Elimination of domestic violence against women.

[148]Similarly, see: C. Chinkin, 'Violence Against Women' in *The UN Convention on the Elimination of All forms of Discrimination Against Women: A Commentary*, 443473, (Oxford University Press, 2012) Chinkin [2012].

[149]UN General Assembly, A/RES 62/134 (2007) Eliminating rape and other forms of sexual violence in all their manifestations, including in conflict and related situations.

[150]UN General Assembly, A/RES 48/143 (1993); A/RES 49/205 (1994); A/RES 50/192 (1995) and A/RES 51/115 (1996) on Rape and abuse of women in the areas of armed conflict in the former Yugoslavia.

[151]See inter alia: (ICTY) *Tadić*, (7 May - 14 July 1997, 15 July - 11 November 1999); *Celebici*, (16 November 1998 - 20 February 2001, 9 October 2001 - 8 April 2003); *Kunarac, Kovač and Vuković*, (Foča case), (22 February 2001 - 12 June 2002); *Kvočka et al*, (2 November 2001 - 28 February 2005).

[152]A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013) A/RES 67/144 (2013).

[153]UN General Assembly, A/RES 52/99 (1997); A/RES 53/117 (1998); A/RES 54/133 (1999) and A/RES 56/128 (2001). Referred to as 'harmful practices' by a dedicated resolution as early as 1954.

of violence have changed over the years. Some resolutions call them 'practices affecting the health of women and girls', yet later the title changes to 'traditional' practices" or 'traditional or customary practices'. These resolutions included female genital mutilation, considered during the past 20 years as a particularly damaging practice affecting numerous girls and women and has recently received a dedicated resolution.[154] On a similar note, several resolutions have also been dedicated to crimes against women committed in the name of honour.[155] These resolutions consistently address 'the girl-child', yet neither age nor any other social category are clearly addressed as a social category. Neither are there clear references to structural elements or categories (such as poverty, class or religion) other than social and cultural norms as having an influence on harmful practices.

Trafficking in women and girls has been addressed in resolutions since 1994.[156] The most recent resolutions mention 'factors that increase vulnerability to being trafficked, including poverty and gender inequality' and noticed that trafficked women appear to come from 'developing countries and from some countries with economies in transition'.[157] Furthermore, they recognise that victims of trafficking are 'exposed to racism, racial discrimination, xenophobia and related intolerance', reflecting a structural view on the issue. Moreover, these resolutions explicitly refer to 'multiple forms of discrimination' based on gender and origin affecting trafficked women and girls.[158] New grounds for multiple discrimination, that also 'fuel trafficking', were later added to this enumeration: age, ethnicity, culture and religion.[159] This 'intersectional' view on trafficking, perceived in the resolutions, is more limited in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol I), complementary to the United Nations Convention against Transnational Organised Crime (UNCTOC).[160] The protocol points at 'poverty, underdevelopment and lack of

[154]See: UN General Assembly, Intensifying global efforts for the elimination of female genital mutilations: resolution adopted by the General Assembly, 5 March 2013, A/RES/67/146.

[155]UN General Assembly, A/RES 55/66 (2000); A/RES 57/179(2002) and A/RES 59/165 (2004).

[156]UN General Assembly, A/RES 49/166 (1994); A/RES 50/167 (1995); A/RES 51/66 (1996); A/RES 52/98 (1997); A/RES 53/116 (1998); A/RES 55/67 (2000); A/RES 57/176 (2002); A/RES 59/166 (2004); A/RES 61/144 (2006); A/RES 63/156 (2008); A/RES 64/293 (2009); A/RES 65/190 (2010) and A/RES 67/145 (2012) on Trafficking on women and girls.

[157]See: A/RES/59/166 (2005); A/RES 61/144 (2006) on Trafficking on women and girls.

[158]Ibid

[159]See: A/RES/63/156 (2009).

[160]UN General Assembly, United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly, 8 January 2001, A/RES/55/25, available at: `http://www.refworld.org/docid/3b00f55b0.html` [accessed 7 December 2014].

opportunity' as factors incrementing the vulnerability for trafficking.

Regarding the measures being recommended by the General Assembly, several resolutions have been passed, 'confirming' several principles and notions held in other documents on VAW, including DEVAW[161] and the Beijing Conference, analysed in subsection 3.5.3. For instance, several recommendations point out the States' obligation to promote and protect human rights and fundamental freedoms, and the duty to exercise due diligence to prevent, investigate and punish VAW.[162] Furthermore, the resolutions also 'call', 'urge' and 'encourage' states to adopt certain (specific) measures, some included in DEVAW, some emerging for the first time. They include 'examples' of possible ways of implementation.

Nevertheless, the recommended measures are not always consistent, some measures appear at times as a concrete request, and sometimes fall under the examples of implementation. For example, States were 'encouraged' in some resolutions to report to CEDAW Cee on measures adopted in order to eliminate VAW and provide sex desegregated data.[163] In other resolutions, States are 'urged' to do so, and also, to do it with the involvement of the national statistical offices and bearing in mind World Health Organization (WHO) study on VAW and domestic violence.[164] The involvement of statistical offices is a direct requirement in other resolutions, with the additional requirement of maintaining the privacy and confidentiality of the victims.[165] In the most recent resolution on VAW, such requirement is provided as an example of possible implementation that States can adopt in order to eliminate VAW through a systematic, comprehensive, multisectorial and sustained approach.

UNGA Resolutions also call States to comply with human rights instruments and

[161]UN General Assembly, A/RES 55/68 (2001); A/RES/57/181 (2003); A/RES 59/167 (2005); A/RES 61/143 (2007); A/RES 62/133 (2008); A/RES 63/155 (2009); A/RES 64/137 (2010); A/RES 65/187 (2011); A/RES 65/228 (2011) and A/RES 67/144 (2013).

[162]A/RES 59/167 (2005); A/RES 62/133 (2008) A/RES 63/155 (2009); A/RES 64/137 (2010); A/RES 65/187 (2011); A/RES 67/144 (2013) and A/RES 61/143 (2007) on Intensification of efforts to eliminate all forms of violence against women.

[163]A/RES 55/68 (2001); A/RES/57/181; A/RES 59/167 (2005).

[164]A/RES 61/143 (2007) Intensification of efforts to eliminate all forms of violence against women.

[165]A/RES 63/155 (2009); A/RES 65/187 (2011) and A/RES 67/144 (2013).

implement the Beijing Platform of Action,[166] and to ratify conventions and limiting or withdrawing reservations.[167] Furthermore, they urge states to strengthen awareness and preventive measures (through education and public campaigns)[168] and to end impunity by investigating, prosecuting 'with due process' and punishing all perpetrators.[169] Also, the participation of men and boys in the elimination of VAW is sometimes 'encouraged'[170] and sometimes merely 'acknowledged'.

Two *good practices* are identified early among the resolutions: the adoption of comprehensive legislations and policies[171] and the adoption of strategies and action plans.[172] It appears that these practices have inspired the main overarching recommendation, which is to take action to eliminate VAW by means of a more systematic, comprehensive, multi-sectorial and sustained approach.[173] Different measures are included as examples of such approach, often showing some variation from one resolution to the next. In a nutshell, these illustrative measures are:

- Review, and if needed, revise, amend or abolish laws, regulations or practices that have a discriminatory impact on women;[174]
- Empower women (by strengthening their economic capacity, providing information and removing barriers to access to justice);[175]
- Remove barriers to women's access to justice and ensure that effective legal assistance is provided;[176]
- Take positive measures that address structural causes of VAW;[177]
- Ensure that strategies that take the intersection of gender with other factors are developed in order to eradicate VAW;[178]

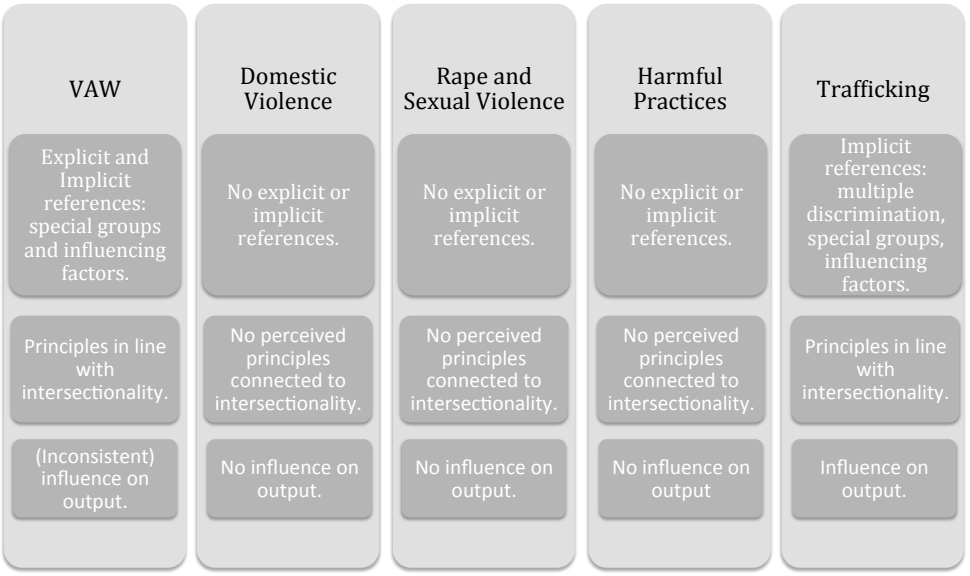
[166] A/RES 55/68 (2001); A/RES/57/181; A/RES 59/167 (2005) and A/RES 61/143 (2007) on Intensification of efforts to eliminate all forms of violence against women.
[167] A/RES 61/143 (2007) on Intensification of efforts to eliminate all forms of violence against women.
[168] A/RES 55/68 (2001); A/RES/57/181(2003); A/RES 59/167 (2005)
[169] A/RES 63/155 (2009).
[170] A/RES 59/67 (2005) and A/RES 67/144 (2013).
[171] A/RES/57/181; A/RES 59/167 (2005).
[172] A/RES/57/18; A/RES 59/167 (2005).
[173] A/RES 61/143 (2007); A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[174] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[175] A/RES 61/143 (2007); A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[176] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[177] A/RES 61/143 (2007).
[178] A/RES 61/143 (2007).

- Integrate a gender perspective in their national action plans;[179]
- Monitor and evaluate the implementation of national measures;[180]
- Improve coordination of responses of relevant public officials and other stake holders;[181]
- Provide training for relevant officials and agents;[182]
- Establish integrated centres for victims of VAW (providing shelter, legal, health, psychological, counselling);[183]
- Provide adequate and comprehensive rehabilitation and reintegration of victims into society;[184]
- Ensuring that the prison system and probation services provide appropriate rehabilitation programmes for perpetrators;[185]
- Effective measures to prevent the victim's consent from becoming an impediment to bringing perpetrators to justice, with appropriate safeguards to protect the victim;[186]
- Support and engage in partnerships with NGOS, in particular women's organisations;[187]
- Establish national and local helplines.[188]

Based on the review of the different clusters of UN GA resolutions addressing VAW, as illustrated in Figure 3.7, only those addressing VAW in general and trafficking specifically seem to really reflect a seemingly 'intersectional approach' since they point at 'vulnerable groups' and give the impression of treating them as the result of structural arrangements, not as a given. Resolutions adopted in connection to other forms of violence, on the other hand, in spite of making references to specific groups, do not address them as 'symptoms' of structural problems, but as incidental, and the recommended measures do not really take them into consideration.

[179] A/RES 61/143 (2007).
[180] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[181] A/RES 63/155 (2009); A/RES 67/144 (2013).
[182] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[183] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[184] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[185] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[186] A/RES 65/187 (2011).
[187] A/RES 63/155 (2009); A/RES 65/187 (2011); A/RES 67/144 (2013).
[188] A/RES 67/144 (2013).

FIGURE 3.7: General Assembly Resolutions: resemblance of intersectionality



Moreover, this review suggests that, although the 'intersectional approach' is perceived in resolutions addressing VAW in general and those on trafficking, it is not always appropriately, or at least consistently, reflected in the recommended measures either. Figure 3.8, illustrates the approach taken toward different types of violence, showing in yellow, and the recommendations made in relation to them in lilac. Some recommendations are repeated in relation to multiple forms of violence, while social categories, showing in green, are sometimes articulated in connection to notions of 'vulnerability', 'special groups', or 'risks'. The approach, when looked as a whole, shows a complex and unclear picture. This is possibly the consequence of the adoption mechanism within the General Assembly, where resolutions are drafted by state representatives who are not necessarily specialised on the topic of VAW. That may also explain why measures are sometimes clear requirements, sometimes recommendations, and sometimes mere examples of good practices.

3.5 International Conferences

International Conferences inspire and encourage United Nations (UN) organs and international actors, including States, to take action in relation to VAW. They often result in a document in the form of a programme of action, a platform or a declaration, that includes measures that Sates are expected to adopt and

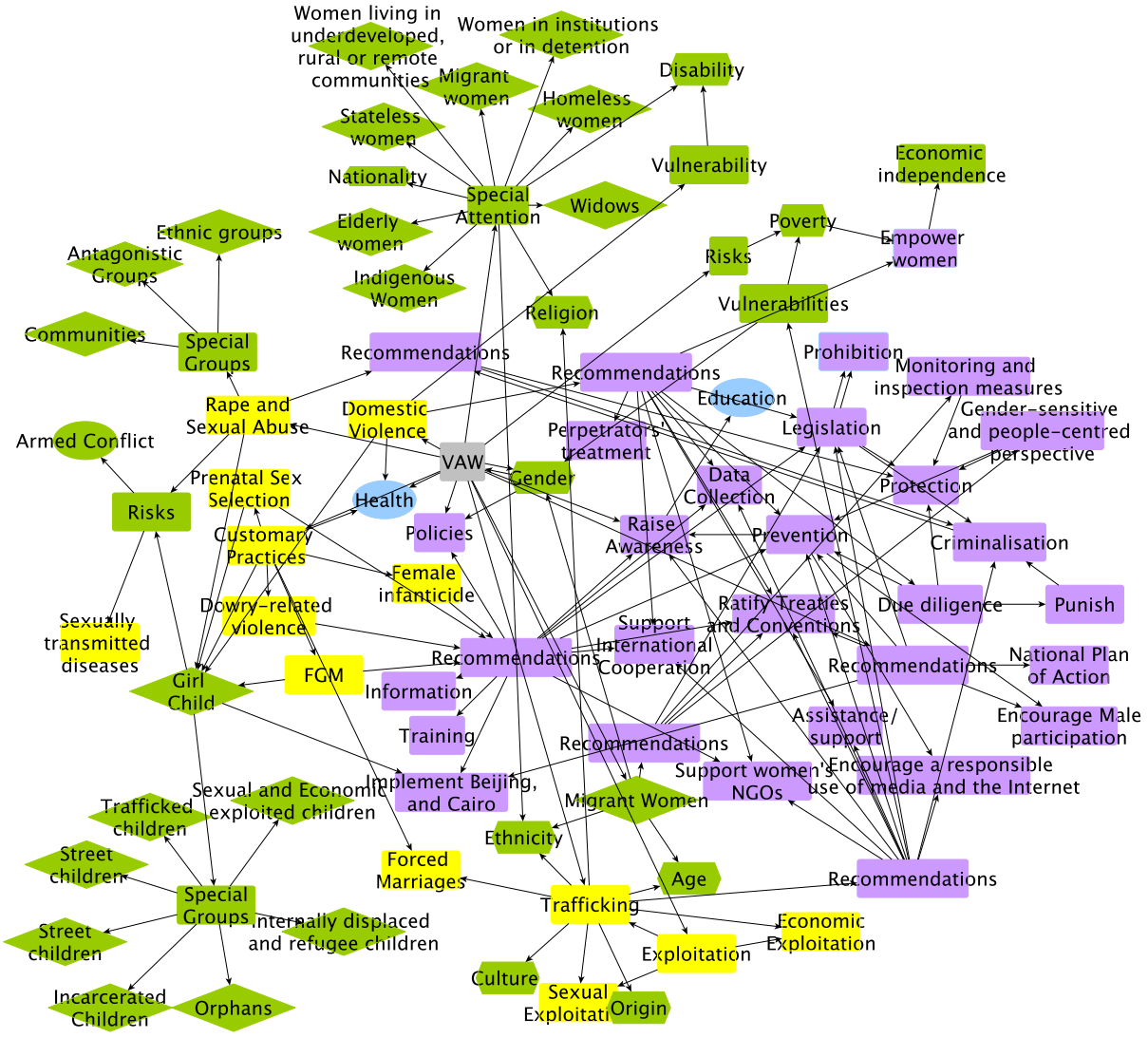


FIGURE 3.8: General Assembly Resolutions: overview of VAW

implement. This expectation of State compliance indicates the normative nature of the documents, as discussed in chapter 1. Furthermore, UN GA resolutions often call UN member States to implement these Programmes, confirming their compelling character.

As a consequence of the celebration of several conferences, at the end of the decade on Women, discussions on VAW were set in the UN agenda. The process started more than a decade prior to the adoption of CEDAW GR 19, when the World Conference of the International Women's Year, held in Mexico in 1975, resulted in the adoption of the Declaration of Mexico on the Equality of Women and their

Contribution to Development and Peace.[189] Although it did not include VAW among its main discussion topics, it considered that physical integrity 'of men and women' is a fundamental element of 'human dignity'.[190] In addition, it recognised rape, prostitution, physical assault, mental cruelty, child marriage, forced marriage and marriage as 'commercial transaction violating the human rights of women and girls'.[191]

The second World Conference for the United Nations Decade of Women was organised in Copenhagen, Denmark, in 1980,[192] which resulted in a resolution on battered women and violence in the family. It considering geographic and social isolation, alcohol, drug abuse and low self esteem as contributing factors to such violence and warning that it was a problem with 'serious social consequences that perpetuate from one generation to the next'.[193]

The third World Conference took place in Nairobi in 1995 and reviewed the achievements thus far.[194] It resulted in the 'Forward looking strategies for the Advancement of Women'.[195] This Conference addressed the issue of 'abused women' and the need for ascertaining the roots of such violence, its prevention and elimination by State policies and legislation.

In this section, I focus on those Conferences which Declarations and Platforms of Action have received the endorsement of the General Assembly, calling on States to implement them. Among these, the 1993 World Conference on Human Rights in Vienna has greatly encouraged women's activism and influenced many of the resolutions subsequently adopted, including DEVAW.[196] The International Conference on Population and Development (ICPD) incorporated VAW within the field of development, and the Fourth World Conference of the Advancement of

[189]Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, adopted at the World Conference of the International Women's Year, Mexico City, Mexico. 19 June-2 July 1975, E/CONF.66/34.
[190]Ibid, para. 11.
[191]Ibid, para. 28.
[192]UN General Assembly, A/RES 33/185; A/RES 33/188; A/RES 33/189; A/RES 33/190; A/RES 33/190; A/RES 33/191 (1979).
[193]Report of the World Conference of the United Nations Decade for Women: Equality, Development and Peace, at resolution 5.
[194]UN General Assembly, A/RES 35/136, A/RES 35/137 (1980); A/RES 36/126, A/RES 36/129 (1981); A/RES 37/676, A/RES 37/62 (1982); A/RES 38/106, A/RES 38/108 (1983); A/RES 38/125, A/RES 38/129 (1984).
[195]UN General Assembly, A/RES 40/108 (1985); A/RES 41/111 (1986); A/RES 42/62 (1987); A/RES 43/101 (1988); A/RES 44/77 (1989); A/RES 45/129 (1990); A/RES 46/98 (1991); A/RES 47/95 (1992).
[196]UN General Assembly, A/RES 48/104 (1993).

women, held in Beijing in 1995, exerted great influence in many developments to come and is therefore included in detail.

3.5.1 The Vienna Conference and the Declaration and Programme of Action

In the preparations towards the 1993 World Conference on Human Rights in Vienna (Vienna Conference) the international women's movement and the human rights movements joined in designating violence against women committed by private individuals and public servants as a priority issue for human rights realisation.[197]

Reticence to include violence against women as a human rights issue falling under international law, and consequently creating obligations for States was by the early 1990s still quite strong. Yet, during the Conference, testimonies of women from Bosnia and the former Yugoslavia about the systematic rapes they were suffering in Bosnia were heard. In combination with the strong lobby of women's organisations, the view that VAW was a violation of human rights finally prevailed over such objections. This new consensus was reflected in the Vienna Declaration and Programme of Action (VDPoA)[198] adopted by the World Conference on Human Rights on 25 June 1993.

The Vienna Declaration and Programme of Action (VDPoA) is divided into two main parts, preceded by a preamble. Part I confirms some of the underlying notions and principles of human rights, and expresses concern for their violation. After recognising that the human rights of women and girls are 'inalienable, integral and indivisible', it holds that:

> Gender-based violence and all forms of sexual harassment and exploitation, including those resulting from cultural prejudice and international trafficking, are incompatible with the dignity and worth of the human person, and must be eliminated. This can be achieved by legal measures and through national action and international cooperation in such fields as economic and social development, education, safe maternity and health care, and social support.[199]

[197] See: Copelon [2003], 866.
[198] UN General Assembly, Vienna Declaration and Programme of Action, 12 July 1993, A/-CONF.157/23.
[199] VDPoA, I p. 18.

In the second part of the VDPoA, in the section dedicated to 'Equality, Dignity and Tolerance', there is a separate heading on the Equal Status and Human Rights of Women, where the following statement on VAW is found:

> The World Conference on Human Rights stresses the importance of working towards the elimination of violence against women in public and private life, the elimination of all forms of sexual harassment, exploitation and trafficking in women, the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.[200]

Regarding violations of human rights during armed conflicts, the Conference notes and condemns the systematic rape of women in war, calling for punishment of perpetrators.[201] Furthermore, the Conference held that violations of the human rights of women in situations of armed conflict, including in particular murder, systematic rape, sexual slavery, and forced pregnancy, are violations of the fundamental principles of international human rights and humanitarian law and require an effective response.[202] This statement paved the way for the discussions held during the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, the "Rome Conference," in 1998, ultimately resulting in the Statute of the International Criminal Court which not only included sexual violence as a war crime and a crime against humanity but also set minimum standards regarding the rights of the victims.

The Vienna Conference achieved two fundamental goals: recognising VAW as a human rights issue and integrating or 'mainstreaming' issues of women's rights and gender equality into the international system at all levels.[203] Although the importance of the intersection of gender with other social categories is not recognised explicitly in relation to gender-based violence, the VDPoA pays attention to specific groups, such as indigenous peoples, racial and religious groups, and to different factors, such as poverty. It also recommends the special promotion and protection of the human rights of 'persons belonging to groups which have

[200] VDPoA, I p. 38.
[201] VDPoA, I p. 28.
[202] VDPoA, I p. 38.
[203] 'The equal status of women and the human rights of women should be integrated into the mainstream of United Nations system-wide activity.' (VDPoA, I p. 37). See: R. Copelon, footnote 2, 867.

been rendered vulnerable, including migrant workers'.[204] The Conference also supported the creation of a new mechanism, the UN SRVAW, which as I discuss in subsection 3.6.2, has greatly fostered new insights about the violence and has promoted an intersectional approach to violence. Although very few specific recommendations on VAW are made, some recommended measures in relation to discrimination against women and equal rights of women are, although indirectly, applicable to VAW.

3.5.2 The Cairo Programme of Action

The International Conference on Population and Development (ICPD) was held in Cairo, from 5 to 13 September 1994.[205] It resulted in the adoption of the Programme of Action on Population and Development (PAPD).[206] The Programme of Action builds upon the Vienna Conference and influenced the Fourth World Conference on Women in 1995 (Beijing '95). The Preamble stresses that the ICPD is not an isolated event and that its Programme of Action builds on the considerable international consensus shown in earlier conferences and documents.

The Programme of Action aims at empowering women by enhancing their access to education and health services and promoting skill development and employment. It recommends a set of important objectives, such as education, especially for girls; gender equality; the reduction of infant, child and maternal mortality; and universal access to sexual and reproductive health, including family planning. VAW is addressed from these perspectives as well. The Programme incorporates a gender perspective into all its different dimensions, and considers the elimination of all kinds of violence against women, together with women's capability to determine their reproductive health and gender equality and equity, as founding principles of population and development-related programmes. Throughout the text, references to specially vulnerable groups, the special situation of women and girls and the influence of poverty are consistently made. For instance, it points out that:

[204] Ibid, I p. 24.

[205] The Conference was organised by the United Nations Population Fund (UNFPA) and the Population Division of the United Nations Department for Economic and Social Information and Policy Analysis (UN DESIPA). 179 States participated in the Conference and engaged in intense negotiations.

[206] Programme of Action of the International Conference on Population and Development (PAPD), (Cairo, 5-13 September 1994).

> Migrants often have less access to reproductive health services, and may be vulnerable to sexual exploitation and HIV infection.[207]

In chapter IV, on Gender Equality, Equity and Empowerment of Women, the Programme of Action provides that States should take full measures to eliminate all forms of exploitation, abuse, harassment and violence against women, adolescents and girls. In relation to the girl child in particular, States *are urged to prohibit* female genital mutilation *and to prevent* infanticide, prenatal sex selection, trafficking of girl children and use of girls in prostitution and pornography.

In the chapter dedicated to the Family, Its Roles, Rights, Composition and Structure, the Programme of Action holds that States, with the collaboration of NGOs and community organisations, should formulate policies to provide more effective assistance to families and individuals within them who may be affected by domestic and sexual violence, among other problems.

Chapter VII is dedicated to Reproductive Rights and Reproductive Health. Under the heading "Human sexuality and gender relations", the Programme of Action indicates that educational programmes should encourage active and open discussion of the need to protect women, youth and children from abuse, including sexual abuse, exploitation, trafficking and violence. Governments and communities are advised to take steps urgently to stop the practice of female genital mutilation and protect women and girls from all similar unnecessary and dangerous practices.

Thus, unlike the VDPoA, the Cairo Programme makes specific recommendations in relation to VAW. Moreover, it addresses violence in relation to the different domains, such as health, education and migration. Finally, although no explicit references to 'multiple discrimination', 'intersectional discrimination' or 'intersectionality', it does take different social categories into account in relation to each of the fields addressed.

3.5.3 The Beijing Declaration and Platform

The Fourth World Conference on Women took place in 1995 in Beijing. The Beijing Declaration and Platform of Action (BDPoA) is the official document resulting

[207] PAPD, footnote 206, para. 2.1

from the Beijing Conference.[208] The BDPoA is aimed at women's empowerment, with emphasis on sustainable development, setting a number of strategic objectives to achieve that goal. It expresses the governments' determination to prevent and eliminate all forms of violence against women.[209]

The definition of VAW adopted in the Platform combines the definition found in DEVAW with elements of the Vienna Conference, saying that VAW is also a violation of the human rights of women in situations of armed conflict, in particular murder, systematic rape, sexual slavery and forced pregnancy. It also includes forced sterilisation and forced abortion, coercive/forced use of contraceptives, female infanticide and prenatal sex selection. It furthermore confirmed that VAW is a violation of women's human rights and fundamental freedoms, and points out the universal nature of the violence, affecting women in all societies, to a greater or lesser degree, and cutting across lines of income, class and culture. The governments 'commit' to implement the programme of action, ensuring that a gender perspective is reflected in policies and programmes.

Regardless of presenting VAW as a 'universal' issue, the BDPoA does not preclude an intersectional view on the violence. In fact, taking place in 1995, it is possibly the first UN document to move closer to a more intersectional approach to women's issues by calling governments to 'intensify efforts to ensure equal enjoyment of all human rights and fundamental freedoms for all women and girls who face *multiple barriers* to their empowerment and advancement because of such factors as their race, age, language, ethnicity, culture, religion, or disability, or because they are indigenous people.'[210] It also warns about that grave violations of the human rights of women occur, particularly in times of armed conflict, and include murder, torture, systematic rape, forced pregnancy and forced abortion, in particular under policies of ethnic cleansing.[211] In addition, the BDPoA notices the damaging consequences of economic recession, poverty, environmental degradation, the population growth, rural migration and the impact of HIV on women.

[208]United Nations, Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995, available at: `http://www.unhcr.org/refworld/docid/3dde04324.html` [accessed 7 December 2014].
[209]BDPoA, para. 29
[210]BDPoA, Declaration, para. 32.
[211]BDPoA, para 11.

The BDPoA also acknowledges the 'diversity of women and their roles and circumstances', stressing that governments need to 'respect and value the full diversity of women situations'. Furthermore, the particular vulnerability of some groups of women is highlighted, just like the previous documents had done. Beside the groups of women commonly referred to in other international documents, it includes repatriated women and women in situations of terrorism, including hostage-taking. In addition, particular attention is paid to trafficking in women and girls for sex trade. This particular form of trafficking is regarded as particularly damaging because it considers that victims are at an increased risk of further violence, as well as unwanted pregnancy and sexually transmitted infection, including HIV/AIDS.

The BDPoA connects VAW with the domain of health by mentioning practices that endanger the health of women, such as early marriage, pregnancy and childbearing and female genital mutilation.[212] It also points out that HIV and other sexually transmitted diseases may come as a consequence of sexual violence.[213] The BDPoA, similar to the Cairo PoA, emphasise the health consequences of VAW:

> Sexual and gender-based violence, including physical and psychological abuse, trafficking in women and girls, and other forms of abuse and sexual exploitation place girls and women at high risk of physical and mental trauma, disease and unwanted pregnancy. Such situations often deter women from using health and other services.[214]

The first strategic objective set in relation to VAW is to take integrated measures to prevent and eliminate violence against women. Governments should perform a number of actions, some of them being of a formal nature, like condemning violence against women and refraining from invoking any custom, tradition or religious consideration to avoid their obligations, or ratifying international human rights norms and instruments as they relate to VAW.

Some other recommendations refer to much more substantial actions, like taking measures to ensure the protection of women subjected to violence, access to just and effective remedies, including compensation and indemnification and healing of victims, and rehabilitation of perpetrators or providing training to public servants

[212] BDPoA, p. 93.
[213] BDPoA, para. 98.
[214] BDPoA, p. 94.

and all relevant personnel. Other actions instrumental to a proper implementation of measures, like allocating adequate resources, are also recommended.

The negative consequences of under reporting, making the prevalence of violence difficult to determine, and the failure to protect victims or punish perpetrators even after reporting are mentioned. The importance of gathering gender-disaggregated data and statistics, together with documentation and research on violence against women is recognised as well.

Some actions recommended call for the collaboration of the governments with community organisations, NGOs, educational institutions, the public and private sectors, and the mass media, such as the provision of services and awareness raising. Governments are thus expected to 'encourage and fund' several initiatives performed by other agents, like civil society organisations or the community. In addition, some actions address employers and trade unions besides governments.

The second strategic objective put forward in the Platform of Action is to study the causes and consequences of violence against women and the effectiveness of preventive measures. The actions recommended in relation to this objective include a myriad of actors besides governments, as well. The last objective is to eliminate trafficking in women and assist victims of violence due to prostitution and trafficking. In this respect, actions are expected from governments of countries of origin, transit and destination of trafficking, and also from regional and international institutions.

The actions recommended are quite similar to the ones found in General Assembly resolutions. All measures are 'recommendations' to governments, and judging by the order or the languages used, no priority seems to be given to any of them. Yet calls for the implementation of the BDPoA are made every year in General Assembly resolutions.[215] Moreover, the implementation of the BDPoA has been reviewed and revised every five years, in 2000, 2005 and 2010.

The 2000 review, commonly known as 'Beijing+5', was a long and challenging process involving all actors at national, regional and global levels, taking several meetings internationally and regionally. Despite much progress done in relation to the status of women and VAW, the responses from Member States indicated that more work was needed with regard to implementation particularly the areas of

[215]UN General Assembly, A/RES 52/86 (1997) on Measures for the Elimination of VAW.

violence and poverty. Eventually, member States agreed to 'assess regularly further implementation of the Beijing Platform for Action', adopted by consensus during the twenty-third special session of the General Assembly, which as commented in the section dedicated to General Assembly resolutions, gave momentum to the periodically passing of General Assembly resolutions addressing VAW specifically.

Consequently, the Commission on the Status of Women (CSW) called for a new review of the implementation of the BDPoA to take place at its 49th session in March 2005. The Division for the Advancement of Women had prepared a questionnaire to compile information from Governments on major achievements and obstacles in implementation of the BDPoA and the outcome of the first review in 2000. The filled questionnaires and a variety of sources of information and statistics helped prepare for the review and appraisal. As the outcome of the ten-year review, the Commission adopted a new Declaration which reaffirmed the BDPoA and the outcome documents of Beijing+5. The Division for the Advancement of Women prepared compilation with the major findings on each of the 12 Critical Areas of Concern in the Platform for Action in order to help Member States, the United Nations and NGOs in accelerating the implementation of the BDPoA.

The most recent review and appraisal took place in March 2010, this time largely focusing on experiences and good practices. The review was conducted at three different levels: the 'national level' mainly by means of the country questionnaires, the 'regional level' by several regional meetings, and 'globally' by the production of reports encompassing all the results. This attention to good practices may explain the type of measures lately included in General Assembly resolutions.

3.5.4 Final Observations on the International Conferences

This review of the main Conferences show a comprehensive approach in dealing with violence against women, incorporating it among other domains, connecting it to development and the empowerment of women. In doing so, VAW has been addressed in connection to gender, yet recognising the interaction of gender with other social categories and structural elements, and recognising specific groups of women. This approach has been, to some extent, reflected in the recommended measures. The extent to which intersectionality is revealed in the Conferences' final documents is illustrated in Figure 3.9.

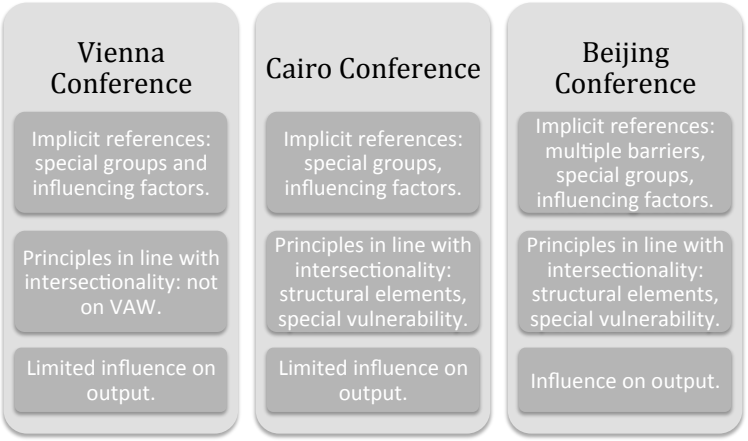


FIGURE 3.9: International Conferences: resemblance of intersectionality

These Conferences have, if not shaped, largely influence the human rights framework on VAW in two ways. Firstly, the General Assembly continuously call on States to comply with the commitments undertaken with the adoption of the Declarations and Programmes of Action, suggesting that indeed, these documents are normative in their character and constitute a sort of soft law. States are therefore expected to act accordingly. In addition, several of the recommendations included in the PAPD and BDPoA are replicated in General Assembly resolutions on an almost continuous basis.

Secondly, the Conferences have provide momentum and set the process of regulation on VAW in motion. Particularly in the case of the VDPoA, although it does not create any recommendation, is by now a consolidated part of the preambles of any declaration dealing with Human Rights. Similarly, the Beijing Conference, being 'the' women's conference in international law is commonly included among the main soft law instrument accounts.

3.6 Reports and studies

3.6.1 The reports of the United Nations Secretary General

The United Nations Secretary General (UN SG) is chief administrator of the entire UN,[216] and has been granted the right to take political initiative. The role

[216]United Nations, Charter of the United Nations, 24 October 1945, 1 UNTS XVI, available at: `http://www.refworld.org/docid/3ae6b3930.html` [accessed 7 December 2014], art. 97 lc 3.

of the UN SG is vaguely defined in the UN Charter, and strongly depends on the personality and individual agenda of each bearer. The UN SG has a duty to participate in and prepare the meetings of the UN principal organs, such as the Security Council, the General Assembly, the ECOSOC and the Trusteeship Council.[217] The Rules of Procedure provided the Secretary-General with an opportunity, which in practice, exert influence on the direction taken within the UN since he is entitled to included items in the provisional agendas, to participate in the meetings and to be heard upon request.

The UN GA is capable of mandating the UN SG to issue reports on specific topics with the purpose of clarification and information of all member states prior to holding debates during the session meetings. The reports are publicly available, thereby reaching civil society organisations as well. In December 2003, the General Assembly mandated the preparation of an in-depth study on all forms and manifestations of VAW in resolution 58/185. Consequently, the Secretary General presented in 2006 the In-depth study on all forms of violence against women.[218]

The report intended to identify ways and means to ensure more sustained and effective implementation of State obligations to address VAW, and to increase State accountability. The study draws from different sources, such as contributions by Member States in response to a *note verbale* on the occasion, responses to the questionnaire for the 10-year review of BDPoA; reports of States parties to CEDAW, contributions by entities of the United Nations system, several human rights treaty bodies, and regional organisations and input by NGOs. It also had the guidance of an advisory committee of 10 experts on violence against women from all regions, in addition to consultations with the independent expert for the Secretary-General's study on violence against children and the United Nations Special Rapporteur on Violence Against Women (UN SRVAW).

This extensive report starts by setting VAW within human rights, explaining that VAW is a violation of human rights and the consequences of making such recognition. It also elaborates on the role of social movements in reaching attention of the international community. It provides a detailed overview of the causes and consequences of VAW. In relation to this aspect, it emphasises the importance of structural factors and risk factors for violence. These aspects are relevant to

[217] See Art. 98 cl 1 UN Charter.

[218] UN General Assembly, In-depth study on all forms of violence against women: report of the Secretary-General, 6 July 2006, A/61/122/Add.1 (UNSG report), available at: `http://www.refworld.org/docid/484e58702.html` [accessed 7 December 2014].

our study since they illustrate the views underlying the norms of the framework. Regarding the overarching approach, the report explains that:

> Violence against women is not confined to a specific culture, region or country, or to particular groups of women within a society. The different manifestations of such violence and women's personal experience of it are, however, shaped by many factors, including economic status, race, ethnicity, class, age, sexual orientation, disability, nationality, religion and culture. In order to prevent violence against women, the underlying root causes of such violence and the effects of the intersection of the subordination of women and other forms of social, cultural, economic and political subordination, need to be identified and addressed.[219]

The report presents patriarchy as entrenched in social and cultural norms, institutionalised in the law and political structures, embedded in local and global economies and ingrained in formal ideologies and in public discourse, yet it had many varied historical manifestations and functions differently, depending on specific cultural, geographic and political settings. More importantly, it says, patriarchy is intertwined with many other structural factors, and for that reason, analysis of violence must be contextualised. In this manner, it argues, it is possible to truly capture the way women exercise agency and varying degrees of control over their lives even within the constraints of multiple forms of subordination affecting them.

The report also highlights that culture is not homogenous, but incorporates competing values and is constantly being shaped and reshaped by processes of material and ideological change at the local and global levels. It suggests that culture should be considered as fluid, a shifting set of discourses, power relations and social, economic and political processes, rather than as a fixed set of beliefs and practices.

Regarding factors leading to the violence, the report identified some structural causal factors. Firstly, connected to the use of violence in conflict resolution, the report states that the use of rape as a tool of war and atrocities targeting women are the most systematic expressions of VAW in armed conflict. The second factor relates to legal doctrines which protect the privacy of the home and family as justification for the State's lack of intervention when violence is committed within

[219] In Depth Study, footnote 218, para. 66.

the family. In addition, the State plays a key part in the construction and maintenance of gender roles and power relations. The permanence of stereotypes and prejudices regarding gender roles is thus the result of State inaction or ineffective measures. Some risk factors are also identified at the levels of the individual, family, community, society and State, such as a history of abuse as a child, substance abuse, low educational or economic status, membership in marginalised communities, women's isolation, lack of social support, legitimisation of male violence and social and economic disempowerment, including poverty.

Considering all these references, we can see that the approach adopted by the Study is clearly intersectional. Yet there are not only 'implicit' references to intersectionality. The report states:

> The intersection of male dominance with race, ethnicity, age, caste, religion, culture, language, sexual orientation, migrant and refugee status and disability - frequently termed 'intersectionality' - operates at many levels in relation to violence against women.[220]

We could argue thus, that the first time that the General Assembly is formally informed about the facts and figures of the global situation of VAW, intersectionality is already a constitutive part of that approach. The analysis of the General Assembly resolutions in the previous section confirm the influence of the Study on resolutions adopted after 2006.

Regarding the recommended measures, the study explains that they are derived from the existing instruments dealing with VAW, such as the CEDAW and GR 19, Belém do Pará and the Protocol to the African Charter. In addition, it mentions jurisprudence from the CEDAW Committee, the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR) and the InterAmerican Commission. Included measures are:

1. Legal and policy framework:

(a) Adhere to CEDAW and OP;

(b) Include the principle of equality of men and women in national constitutions;

(c) Enact, implement and monitor legislation covering all forms of violence against women.

[220] In Depth Study, footnote 218, para 361.

2. Criminal justice system:

   (a) Investigation: investigate acts of VAW, use techniques that do not degrade women subjected to violence and minimise intrusion, while maintaining standards for the collection of the best evidence;

   (b) Prosecution and punishment of perpetrators;

   (c) Standards for criminal proceedings, including rules of evidence and procedure, should be conducted in a gender-sensitive manner to ensure that women are not revictimised.

3. Remedies for victims of violence against women:

   (a) Including access to justice; reparation for harm suffered; restitution; compensation; satisfaction; rehabilitation and guarantees of non-repetition and prevention.

4. Support services:

   (a) Access to shelters, medical, psychological and other support, legal aid and other services.

5. Modifying attitudes and behaviour:

   (a) Elimination of stereotypes that legitimise, exacerbate or tolerate VAW;

   (b) Customs, traditions or religious considerations may not be invoked to avoid obligations to eliminate VAW.

6. Capacity-building and training:

   (a) Agents responding to VAW (enforcement officers, immigration, judicial and medical personnel and social workers), require the capacity to deal with such violence in a gender-sensitive manner;

   (b) Training, guidelines and manuals relating to VAW contribute to such efforts.

7. Data and statistics:

   (a) Promoting research, collecting data and compiling statistics is addressed in policy instruments.

As a final addition to this list, it should be pointed out that, in line with the general attention paid to civil society and civil organisations, the report states that

all efforts to address systemic gender-based discrimination against women must engage women in the communities concerned to provide leadership and develop strategies.

These recommended measures represent the minimum standards on States' responsibilities towards VAW from an intersectional and human rights approach to the violence, according to the Study. In the meantime, the different tone of the UN SG report and the report of the UN SRVAW, analysed next, should be highlighted. While the first is of a more descriptive character, and meant as a piece of information for the UN GA, the latter report tends to be of a more normative character, even when it also includes informative and descriptive information.

3.6.2 The reports of the United Nations Special Rapporteur on Violence Against Women

As commented, as result of the Vienna Conference, the then United Nations Commission on Human Rights (CHR) appointed the United Nations Special Rapporteur on Violence Against Women (UN SRVAW),[221] responsible of identifying and expressing concerns over trends in women's human rights violations and developing legal standards and doctrines for distinct forms of gender-based violence faced by women, including those that are cognisant of the multilayered violations of women. It is also expected to examine communications and make recommendations for eliminating violence as well as its root causes. As part of developing legal frameworks, the SRVAW has assessed prevalent legal responses, pointed out gaps, and proposed substantive, procedural and evidentiary changes to correct these.

There have been some conceptual shifts within the UN SRVAW mandate since its inception, but nevertheless it has contributed to clarify several concepts in the area of VAW. For instance, it has emphasised that VAW as the product of gender inequality and patriarchal constructions. It argues that the ideology, structures and systems on which the family, the community, the market and State are based need to be address if the roots of VAW want to be addressed. Furthermore, the UN SRVAW recommends parting from a 'poor victim' approach to one of 'agency'. The Rapporteur explains:

[221]The role of UN SRVAW has been performed by Ms. Radhika Coomaraswamy , 1994 - July 2003; Dr. Yakin Ertürk, August 2003 - July 2009 and Ms. Rashida Manjoo, since August 2009.

> The 'violence against women agenda' intrinsically challenges aspects of everyday life that are taken for granted, and necessitates a shift of focus from a victimisation-oriented approach to one of empowerment.[222]

Furthermore, the UN SRVAW has identified specific groups of women facing multiple risks and violations or greater barriers to justice due to marginalisation arising from their standing on different systems of inequality in addition to gender, such as migrant domestic workers, asylum-seekers facing persecution on account of gender, refugee women, migrant women and women living with HIV/AIDS. This has contributed to the recognition of the compounded effects of more than one form of discrimination, stressing the need for solutions which address these aggravated forms of discrimination. Furthermore, it has often promoted the adoption of an intersectional approach to VAW, which, she argues, allows for suitable State responses and measures that meet the additional risks and greater barriers to justice. She states:

> [The UN SRVAW has] consistently been attentive towards the intersectional and compounded risks experienced by women due to marginalised status or context. Intersectionality, [...] is borne out in the work and the work methods of the mandate.[223]

In addition, the current Special Rapporteur, Rashida Manjoo, issued a report in 2011 addressing multiple and intersecting forms of discrimination and violence against women[224] where she states that in order to fully address and end all forms of VAW, a 'holistic approach to defining the problem' is required to identify needs and bring change through legislation.[225] Such holistic approach:

1. Underscores the interdependence and indivisibility of human rights;
2. Situates VAW on a continuum;
3. Acknowledges the structural aspects and factors of discrimination;

[222]UN Human Rights Council, Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk: addendum: 15 years of the United Nations SR on violence against women, its causes and consequences (1994-2009): a critical review, 27 May 2009, A/HRC/11/6/Add.5, available at: `http://www.refworld.org/docid/4a3f5fc62.html`. [accessed 7 December 2014], 35.

[223]UN SRVAW, Report: '15 years', footnote 222, 9.

[224]UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, 2 May 2011, A/HRC/17/26, available at: `http://www.refworld.org/docid/4ef1a5ce2.html`.

[225]Ibid, para. 57.

4. Analyses social and/or economic hierarchies between women and men and also among women;

5. Explicitly interrogates the places where VAW coincides with multiple and intersecting forms of discrimination;

6. Takes women's social location and bodily integrity as a starting point for intervention and treatment;

7. Gender inequality and gender stratification are two of the many factors perpetuating and promoting VAW;

8. Matching of local level responses that best address the particular needs related to violence in their specific contexts.

The UN SRVAW thus, applies an intersectional approach in its mandate, and it also recommends it implicitly and explicitly. Whether and to what extent such approach is replicated by other bodies and States depends on the outreach of the mandate's activities. In this regard, it should be pointed out that in 2004, the UN SRVAW was mandated to make an annual oral presentation to the General Assembly, and since March 2006, it reports to the Human Rights Council. In addition, Resolution 7/24 of March 2008 (paragraph 12) mandates the SRVAW to make an annual oral presentation to the Commission on the Status of Women. Furthermore, the UN SRVAW engages in consultations and cooperation with governments, UN bodies and other special mechanisms, NGOs, academics; and research institutes. Indeed, the mandate had important participation in relation to the *In Depth Study*, discussed in subsection 3.6.1 and also interacts with other regional bodies and mechanisms. It can be expected thus, that this broad and varied outreach of the body would disseminate the intersectional approach to violence within the UN and among States.

3.6.3 Final observations on the special reports

In this section, two United Nations bodies have been analysed. These have explicitly and implicitly adopted an 'intersectional approach' to violence, as illustrated in Figure 3.10, and the UN SRVAW in particular, has included this approach in its reports and in specific situations being analysed, and also in the resulting recommendations.

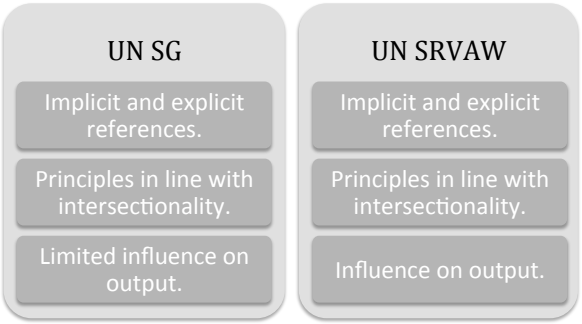


FIGURE 3.10: UN 'special' mechanisms: resemblance of intersectionality

Both United Nations bodies have had considerable impact on other UN bodies, particularly on the UN General Assembly. Some of the notions and principles upheld by the UN GR and the CEDAW Committee can be linked to the work of these bodies. When these UN bodies replicate the principles and notions included in the reports and studies, the work of the UN SG and UN SRVAW reaches out to governments and civil society, yet transformed into normative recommendations. Furthermore, when the UN SG and UN SRVAW recommendations are implemented by States in the belief that they are complying with international law, regardless of whether other UN bodies have called them to do so, it suggests that these reports and studies have a normative character of their own.

3.7 Chapter Conclusion

This chapter was dedicated to addressing the first and second research questions of this thesis. The first question read:

> How is intersectionality currently positioned within the international human rights framework to violence against women?

Having analysed all relevant United Nations documents dedicated to violence against women, it is possible to venture a provisional answer.

References to the intersectional approach are more strongly perceived in the work of the CEDAW Committee, some UN General Assembly Resolutions, the Declaration of the Beijing Conference and the work of the UN Special Rapporteur on Violence against Women. However, a distinction needs to be made between implicit references to intersectionality, that is, the use of certain keywords and

references to principles that are promoted by intersectionality, and explicit references. The review of documents in this chapter has revealed four main types of implicit references:

1. References to groups of women specially vulnerable,
2. References to connections between specific social categories or structural factors and some forms of violence,
3. References to connections between VAW and multiple policy domains,
4. References to 'multiple', 'intersecting' or 'multi-dimensional' discrimination.

Among these types of references, only the first one does not necessarily suggest a 'seemingly' intersectional approach by itself. As commented in the sections above, references to groups of women who are specially vulnerable do not always address this vulnerability as the result of structural (social or institutional) arrangements, and maybe interpreted in essentialising ways. Some of these references seem to work as a simple 'warning' that there are differences among women. The rest of the references suggest that the 'intersectional positioning' of certain women and their 'predisposition' to suffering violence is in fact a result of structural arrangements, in particular those referring to multiple discrimination.

Nevertheless, references emerged gradually, in a semi-sequential order, where the older notions do not disappear but are complemented by more complex and progressive perspectives and continue to form part of the approach to VAW. This seems to suggest that the UN human rights framework on VAW, or more precisely, the bodies in charge of elaborating such framework, try to keep up with new approaches to VAW and make a framework compatible with such understandings. This explains why bodies that have a continuity in time, such as the CEDAW Cee, the UN GA and the UN SRVAW, are more capable of reflecting those developments in their work. Figure 3.11 shows the most significant documents in the process of moving from implicit references to explicit ones. It appears that the UN Secretary General's 'In Depth Study', elaborated in combination with the UN SRVAW to be presented to the UN GA, has been the first official UN document addressing 'intersectionality' explicitly in relation to VAW. Later, GR 28 is the most clear endorsement of the approach.

Regarding the second research question, the answer seems to present three constitutive elements. Let us recall this question here:

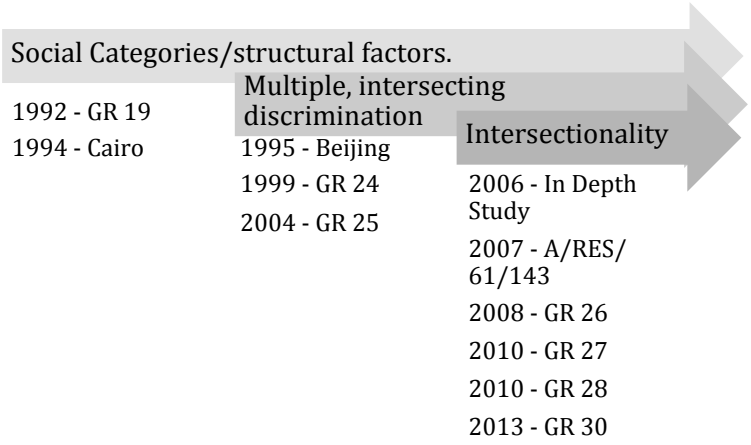


FIGURE 3.11: Process of inclusion of intersectionality

What are the derived duties of States?

In general terms, when documents point to the intersection of gender and other categories and violence, they do it as a way of highlighting a reality that needs to be taken into account in relation to the adoption of measures. As it has been illustrated in the sections above, these social categories or structural factors are regarded as having an influence on specific types of violence, and sometimes, they are to be taken into account in the adoption of specific measures by means of a 'warning' or by recommending concrete measures. So first we find a 'claim' about an intersectional positioning of women making them vulnerable, which may have a specific or a general 'request' attached. For instance, GR 19 points at specific intersections, such as, gender, age, rurality and migration, having consequences in relation to sexual exploitation, particularly in the context of domestic work. As a result, GR recommends 'to monitor their employment conditions.'

In addition, this proclaimed notion that certain intersections have consequences in relation to specific forms of violence, or that they create specific situations in relation to some domain, is applied as a 'lens' in concrete cases leading to specific requirements. For instance, the CEDAW Committee has found in *Kell v. Canada* that in connection to indigenousness, domestic violence brought violations in the domain of housing, and called the state to provide effective remedies and access to justice.[226] The effectiveness of the remedies was also measured in connection to the intersection of gender and migrant status of the victim, and her inability to speak the language in *Jallow v. Bulgaria*.[227] Thus, the 'intersectional lens',

[226]See *Kell vs. Canada*, footnote 93.
[227]See: *V.K. v Bulgaria*, footnote 62.

adapted to the case at hand, has brought recommended measures in the field of 'protection', particularly in relation to effective remedies and access to justice. This suggests that State responses are to a large extent tailor made: address the concrete situation of the State. It seems thus, that 'intersectionality', like the 'principle of due diligence', is more about what measures are to be implemented and why, rather than a rigid content of obligations.

This idea of intersectionality as a tool for the interpretation of norms is suggested by GR 28, presenting intersectionality as a 'basic concept for understanding the scope of obligations'.[228] This interpretative tool is thus to be used by the State in order to implement CEDAW, and by those monitoring such compliance. Thus, the question about what obligations arise in connection to intersectionality can not be answered by enumerating the concrete recommendations that aim at addressing one 'intersectional group', nor the few concrete recommendations arising in connection to specific 'intersectional locations'. On the contrary, it calls for the 'tailoring' of the general obligations regarding VAW found in the human rights framework by the application of an 'intersectional approach'. Only then, the obligations of the States can be identified.

The delineation of such 'intersectional approach' seems to provide enough flexibility as to fit concrete situations, leaving also quite some room for interpretation. Nevertheless, a few concrete measures are mandated in GR 28 in connection to intersectionality as 'approach', such as 'legally recognising' and 'prohibiting' intersecting forms of discrimination. May these be taken as 'initial steps'? The legal recognition is probably intended to establish the 'intersectional position' of women as the basis for subsequent measures, similar to the documents analysed in the chapter. Hence, only the empirical application of the intersectional approach will reveal the concrete obligations of the State.

[228] See GR 28, footnote 54.

Chapter 4

The Council of Europe and the Inter-American system

> Harmony exists no less in difference than in likeness, if only the same key-note govern both parts.
>
> Margaret Fuller

4.1 Introduction

In this chapter, the human rights norms applicable to Violence Against Women (VAW) existing at regional level are analysed by the application of the 'intersectional techniques', discussed in chapter 2 subsection 2.6.1, in order to answer the first research question: How is intersectionality currently positioned within the international human rights framework to violence against women and what are the derived duties of States?. The obligations arising in connection to references to intersectionality will be identified considering the principles of interpretation discussed in subsection 1.4.2 of chapter 1, and in doing so, the second research question will be addressed.

The choice for the regional systems included in this chapter follows from two basic requirements: the existence of a human rights framework on VAW and human rights courts adjudicating individual cases of VAW. In comparing these two sources, conventions and case law, a more complete view on the approach taken at the regional level is expected. The Council of Europe (CoE) and the Organization of American States (OAS) are the two selected regional systems. The decision has been inspired by the 'double' instrument arrangement that both systems possess: a human rights convention and a convention dedicated to VAW, and also by the fact that both systems possess long standing Human Rights Courts and case law on VAW, contributing to the illustration of the framework.

4.2 The Council of Europe

In 1949, the Council of Europe was founded with the aim of facilitating the process of European re-construction after World War II by promoting the rule of law, democracy, human rights and social development.[1] This human rights institution includes today 47 Member States, from which 28 are also members of the European Union. All Council of Europe Member States have ratified the European Convention on Human Rights and Fundamental Freedoms (ECHR).[2] The implementation of the Convention is overseen by the European Court of Human Rights (ECtHR), and its decisions are enforced by the Committee of Ministers of the CoE.

Since 1980, the CoE has promoted numerous studies and publications concerning VAW[3] and has, since mid 1990s, elaborated a legal and policy framework addressing gender inequality and violence against women.[4] In addition to the ECHR, Recommendation Rec(2002)5 of the Committee of Ministers on the protection of

[1] See: Statute of the Council of Europe, available at: `http://conventions.coe.int/Treaty/en/Treaties/Html/001.htm` [accessed 8 December 2014], preamble and article 1.

[2] Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: `http://www.refworld.org/docid/3ae6b3b04.html` [accessed 8 December 2014].

[3] For a short overview, see: `http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/documentation_studies_publicationsGE_en.asp` [accessed 8 December 2014].

[4] For an overview of the different standards and mechanisms elaborated, visit: `http://www.coe.int/t/dghl/standardsetting/equality/03themes/standards-mechanisms/index_en.asp` [accessed 8 December 2014].

women against violence[5] and the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence[6], recently in force, are the two main documents introducing obligations for Member States in relation to VAW specifically. None of these, however, allow for individual complaints for their violation to be examined by the ECtHR.

Regarding VAW, thus, the CoE has a normative framework establishing duties for States, formed in first place by the ECHR and by the Istanbul Convention for those States that have ratified it, and by the Recommendation Rec(2002)5. Only one of the elements of this framework, however, is overseen by the ECtHR: the ECHR.

4.2.1 European Convention for the Protection of Human Rights and Fundamental Freedoms

The ECHR, signed in 1950, was clearly inspired by the Universal Declaration Human Rights (UDHR), adopted two years earlier. It entered into force on the 3rd of September of 1953,[7] and since 2009, it is internally applicable in all Member States.[8]

The ECHR recognises individual rights. In line with the liberal tradition, the ECHR calls Member States to 'respect' the recognised individual rights, creating in principle 'negative' obligations. Article 1 of the Convention reads:

> Obligation to respect human rights: The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention.

[5]Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, 2002. (CoE 2002), available at: `https://wcd.coe.int/ViewDoc.jsp?id=280915&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383`.

[6]Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, available at: `http://www.refworld.org/docid/4ddb74f72.html` [accessed 8 December 2014].

[7]See the current state of ratifications and the complete list of declarations and reservations at: `http://conventions.coe.int` [accessed 8 December 2014].

[8]J. A. Frowein, European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Public International Law [OPIL], *Max Planck Encyclopaedia of Public International Law [MPEPIL].*

However, some rights carry with them a positive obligation for the State. The wording of article 1 suggests this interpretation by using the term 'secure', and it has been confirmed by the Court's jurisprudence, as we shall see below. Moreover, the ECHR must be interpreted objectively and not by the understanding at the time of its ratification. In addition, jurisprudence has established early on that the Convention is a *living instrument*', and must be interpreted in the light of present-day conditions.[9]

The approach toward social differences adopted by the Convention is reflected by the prohibition of discrimination. Article 14 reads:

> The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

A violation to article 14, thus, can be claimed only in connection to the violation of a substantive right included in the Convention.[10] These substantive rights are mostly of a 'civil and political nature', with a few 'economic and social' ones. Although the convention dedicated no explicit attention to VAW, several articles can be of application. Yet, before entering the analysis of those substantive rights that can base a case of VAW, there are some notions surrounding discrimination that deserve attention in order to grasp the current approach toward intersectionality in the CoE.

Two basic notions appear in the context of non-discrimination law as dealt with by the ECHR and the ECtHR: 'direct discrimination' and 'indirect discrimination'. According to the Court, there are cases of *direct discrimination* when there is a difference in the treatment of persons in analogous, or relevantly similar, situations that is based on an identifiable characteristic.[11] *Indirect discrimination*, on the other hand, exists when 'a difference in treatment may take the form of disproportionately affecting prejudicial effects of a general policy or measure which, though

[9] *Tyrer v United Kingdom*, Merits, App No 5856/72, A/26, IHRL 17 (ECHR 1978), [1978] ECHR 2, (1980) 2 EHRR 1, 25th April 1978, European Court of Human Rights [ECtHR].

[10] In addition to article 14, protocol 12 to the ECHR, extends the prohibition on discrimination to any right guaranteed at the national level, even it is not included within ECHR. However, this protocol, although in force, it has been ratified by 17 Member States only.

[11] ECtHR, *Carson and Others v. UK* [GC] (no. 42184/05), 16 March 2010; para. 61. Similarly, ECtHR, *D.H. and Others v. the Czech Republic* [GC] (no. 57325/00), 13 november 2007, para. 175; ECtHR, *Burden v. UK* [GC] (no. 13378/05), 29 April 2008, para. 60.

couched in neutral terms, discriminates against a group'.[12] The requirements in each of these forms, are compared in Table 4.1

Direct Discrimination	**Indirect Discrimination**
	Neutral rule/practice
Unfavourable treatment	Negative effects for 'protected' group
Standard for comparison (comparator)	Standard for comparison (comparator)
Link unfavourable treatment-protected ground of art. 14	

TABLE 4.1: Forms of discrimination

The main difference thus, is that in indirect discrimination there are 'unfavourable effects' of a neutral rule for a group which is at a disadvantaged position. Prima facie thus, this conceptualisation of discrimination has potential for capturing the position of women and other groups in a position of intersectional disadvantage. In addition, the Court has found that it can also be discriminatory when States 'fail to treat differently persons whose situations are significantly different.[13] Differential treatment in the form of special measures need to be adopted in order to 'correct' such imbalance. These measures, however, are normally taken as exceptional and temporary and have been adopted in a very limited number of cases.

Regarding the probatory aspects of a claim of direct discrimination, the Court has clarified that once the applicant has shown a difference in treatment, it is for the Government to show that it was justified. Similarly, in relation to indirect discrimination, the applicant needs to produce prima facie evidence that the effect of a measure or practice is discriminatory. Once this is achieved, the burden of proof will shift on to the respondent State, to whom it falls to show that the difference in treatment is not discriminatory. Indeed, no procedural barriers exist to the admissibility of evidence or pre-determined formulae for its assessment.[14] There is no required rigorous application of the principle *affirmanti incumbit probatio*.[15] In certain circumstances, where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation.[16]

[12] *D.H. and Others v. the Czech Republic*, footnote 11, para. 184; ECtHR, *Opuz v. Turkey* (no. 33401/02), 9 June 2009, para. 183; ECtHR, *Zarb Adami v. Malta* (no. 17209/02), 20 June 2006, para. 80.

[13] ECtHR, *Thlimmenos v. Greece* [GC] (no. 34369/97), 6 April 2000, para. 44.

[14] ECtHR, *Nachova and Others v. Bulgaria* [GC], (nos. 43577/98 and 43579/98), para 147, ECHR 2005- VII.

[15] See: *Aktas v. Turkey*, (no. 24351/94), para 272, ECHR 2003-V.

[16] See: *Salman v. Turkey* [GC], (no. 21986/93), para 100, ECHR 2000-VII, and *Anguelova v. Bulgaria*, (no. 38361/97), para 111, ECHR 2002-IV.

Finally, regarding statistics as probatory evidence of indirect discrimination, the Court has stated that these could not in themselves disclose a practice which could be classified as discriminatory.[17] However, in more recent cases, the Court relied extensively on statistics to establish a difference in treatment between two groups (men and women) in similar situations.[18]

Another issue that requires elaboration is the interpretation of the grounds for discrimination included in article 14. As commented, these grounds are 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'. Although the grounds of this open-ended list are mostly self explanatory, some of them merit specific attention. For instance, since 'ethnicity' is not per se included in the list, some jurisprudence suggests that it can be taken as constitutive of nationality. Similarly, the Court has considered language, religion, nationality, culture and race as overlapping and interconnected.[19] In addition, 'other status' is a ground of special importance since it provides the Court with the opportunity to include non-enumerated grounds. For instance, the ECtHR has expressly stated that 'other status' covers 'sexual orientation',[20] disability,[21] age,[22] military rank,[23] parenthood of a child born out of wedlock,[24], fatherhood[25] marital status,[26] membership of an organisation[27] and place of residence.[28]

The question for our analysis is, however, whether discrimination resulting from the intersection of these grounds is sufficiently covered by the ECHR, and applicable to cases of VAW. In principle, it has been argued that the Court tends to adopt a 'single ground' approach, yet a more flexible and encompassing approach

[17]Hugh Jordan v. U.K. (no. 24746/94) 4 May 2001, para 154.

[18]See: *Hoogendijk v. The Netherlands* (no. 58641/00) 6 January 2005, and *Zarb Adami v. Malta*, footnote 12, paras 77-78.

[19]See: ECtHR, *Timishev v. Russia* (nos. 55762/00 and 55974/00), 13 December 2005, para. 55.

[20]See: ECtHR, *Fretté v. France* (no. 36515/97), 26 February 2002, para. 32.

[21]ECtHR, *Glor v. Switzerland* (no. 13444/04), 30 April 2009.

[22]ECtHR, *Schwizgebel v. Switzerland* (no. 25762/07), 10 June 2010.

[23]ECtHR, *Engel and Others v. the Netherlands* (nos. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72), 8 June 1976.

[24]ECtHR, *Sommerfeld v. Germany* [GC] (no. 31871/96), 8 July 2003; ECtHR, *Sahin v. Germany* [GC] (no. 30943/96), 8 July 2003.

[25]ECtHR, *Weller v. Hungary* (no. 44399/05), 31 March 2009.

[26]ECtHR, *Petrov v. Bulgaria* (no. 15197/02), 22 May 2008.

[27]ECtHR, *Danilenkov and Others v. Russia* (no. 67336/01), 30 July 2009 (trade union); ECtHR, *Grande Oriente dItalia di Palazzo Giustiniani v. Italy* (no. 2) (no. 26740/02), 31 May 2007.

[28]ECtHR, *Carson and Others v. UK*, footnote 11.

seems to be emerging, moving away from the static idea of 'protected ground' toward 'social-contextual approach' by addressing 'persistent forms of stereotyping, prejudice and stigma'.[29] This is in part achieved in case law by using references to 'vulnerability' and 'vulnerable groups' which, some authors argue, are two positive notions 'allowing the Court to address different aspects of inequality in a more substantive manner.'[30]

Nevertheless, whether the use of these notions by the Court may replicate an intersectional discrimination approach depends, in principle, on the possibility to derive such vulnerability from social and structural configurations. This aspect does not seem to have been truly addressed as such by the Court, which seems to focus on the social *consequences* of the stigma, rather than the social *construction* of a certain ground as a form of discrimination. For instance, the Court has referred to the 'turbulent history' of the Roma, who have 'become a vulnerable minority'.[31] In addition, in a number of such cases, the Court has failed to connect the 'vulnerability' to 'discrimination'. The analysis of cases law in subsection 4.2.4 will clarify wether those notions really reflect an intersectional approach in relation to VAW.

Moving to the discussion about the substantial rights that can be of application in cases of VAW, I should point out that the basic general principles will be briefly discussed in this section, and their concrete application to VAW as developed by the Court will be addressed in subsection 4.2.4. The rights most commonly considered are the *right to life*,[32] *the prohibition of inhuman treatment*,[33] the *right to liberty and security*,[34] the *right to respect for private and family life*[35] and *right to an effective remedy*[36] The gender based nature of the violence is addressed by invoking the prohibition of discrimination in connection to any of these rights.

[29]O. M. Arnardóttir, 'The Differences that Make a Difference: Recent Developments on the Discrimination Grounds and the Margin of Appreciation under Article 14 of the European Convention on Human Rights', (2014) *Human Rights Law Review*, 124 .

[30]See: L. Peroni and A. Timmer, 'Vulnerable Groups: the Promise of an Emerging Concept in European Human Rights Convention Law', (2013) *International Journal of Constitutional Law*, 11:1056-1085, 1057 . Similarly: A. Timmer, 'A Quiet Revolution: Vulnerability in the European Court of Human Rights,' in M. Fineman and A. Grear (eds.), *Vulnerability: Reflections on a New Ethical Foundation for Law and Politics*, (Ashgate, 2013).

[31]ECtHR, *Alajos Kiss v. Hungary* App. No. 38832/06, 20 May 2010, 42.

[32]ECHR, footnote 2, article 2.

[33]Ibid, article 3.

[34]Ibid, article 5.

[35]Ibid, article 8.

[36]Ibid, article 13.

Finally, article 41, providing *just satisfaction*, is applicable in relation to compensation for non-pecuniary damage.

Articles 2.1 of the Convention reads:

> Everyones right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

The Court has clarified that in relation to the right to life, the State is required not only to refrain from the intentional and unlawful taking of life, but also to take appropriate steps to safeguard the lives of those within its jurisdiction.[37] The primary duty derived from this notion is to implement effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions, and a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk from the criminal acts of another individual.[38] Nevertheless, this is not an absolute obligation, and its scope has been delineated by the Court:

> Not every claimed risk to life, therefore, can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising.[...] For a positive obligation to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.[39]

The cases analysed below will illustrate the understanding of the Court regarding what kind of situations suggest that authorities 'knew' or 'should have known' of the risk in relation to domestic violence in particular. Furthermore, the Court has confirmed that 'its task is not to take the place of the relevant national authorities in determining the most appropriate methods for protecting individuals from attacks on their personal integrity, but rather to review under the Convention the decisions that those authorities have taken in the exercise of their discretion.'

[37]ECtHR, *L.C.B. v. the United Kingdom*, judgment of 9 June 1998, Reports of Judgments and Decisions 1998-III, p. 1403, 36

[38]ECtHR, *Osman v. the United Kingdom.*, judgment of 28 October 1998, Reports 1998-VIII, p. 3159, 115

[39]Ibid, at para 116.

Another provision potentially used in cases of VAW and calling for some preliminary explanation is the prohibition of torture in article 3, which reads:

> No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

The jurisprudence of the Court shows that ill-treatment must attain a 'minimum level of severity' if it is to fall within the scope of this provision. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.[40] States are then required *to set up a legislative framework* aimed at preventing and punishing ill-treatment by private individuals and *to apply the relevant laws* in practice, affording protection to the victims and punishing the perpetrators when authorities become aware of the imminent risk of ill-treatment of an identified individual or when it has already occurred.

Another seemingly applicable provision is article 5, on right to liberty and security. It partially reads:

> 1. Everyone has the right to liberty and security of person.

However, according to the Court's interpretation, this provision contemplates individual liberty 'in its classic sense, that is to say the physical liberty of the person'[41], while 'security of the person' must also be understood in the context of physical liberty rather than physical safety.[42] In fact, the Court emphasises that the term 'security' also points to the prohibition of arbitrary detention[43], preventing reference to this article in relation to claims for the violation of personal safety.

Article 8 appears to be particularly suitable for addressing cases of domestic violence. It reads:

> Right to respect for private and family life
>
> 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

[40] ECtHR, *Costello-Roberts v. the United Kingdom*, 25 March 1993, 30, Series A no. 247-C.
[41] See for instance, *Engel and Others v. the Netherlands*, footnote 23.
[42] ECtHR, *Zilli and Bonardo v. Italy* (dec.), no. 40143/98, 18 April 2002.
[43] ECtHR, *Bozano v. France*, 18 December 1986, 54 and 60, Series A no. 111.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

The Court has emphasised that although the essential object of this provision is to protect the individual against arbitrary action by public authorities, 'there may in addition be positive obligations inherent in effective 'respect' for private and family life', for instance, adopting measures in the sphere of the relations of individuals between themselves. In this regard, 'children and other vulnerable individuals,' are particularly entitled to effective protection.

The right to effective remedy, as included in article 13 of the Convention, reads as follows:

> Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

The Court has clarified that this provision requires the provision of a domestic remedy to deal with the substance of an 'arguable complaint' under the Convention and to grant appropriate relief. However, Member States are afforded some discretion as to the manner in which they conform to such obligation. Furthermore, the scope of the obligation varies depending on the nature of the applicant's complaint, yet it must be 'effective' in practice as well as in law. In particular, its exercise must not be unjustifiably hindered by the acts or omissions of the public authorities.

Finally, article 41 allows the Court to grant 'just satisfaction' for the injured party if, having found a violation to one of the substantive rights and freedoms, the domestic law provides only 'partial' reparation.

4.2.2 Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe

In April 2002, the Committee of Ministers introduced Recommendation Rec(2002)5 on the protection of women against violence.[44] Although this recommendation does not introduce a legally binding obligation on Member States, it creates an expectation of compliance, and Member States can be asked 'to inform of the action taken by them with regard to such recommendations'.[45] Several evaluations of the implementation of the recommendation have been conducted, and the high level of adherence to the most recent one, with responses from 46 out of 47 Member States, suggests that regardless of the legal status of the document, there is a sense of 'common direction'.[46]

Recalling the Declaration on the Elimination of Violence against Women (DEVAW), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol I), the Beijing Declaration and Platform of Action (BDPoA) and the Resolution on Further Actions and Initiatives to Implement the Beijing Declaration and Platform for Action adopted by the United Nations General Assembly (23rd extraordinary session, New York, 5-9 June 2000), in addition to multiple CoE recommendations, Rec(2002)5 confirms two notions found in UN dedicated documents. It defines VAW as 'any act of gender-based violence, which results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion, or arbitrary deprivation of liberty, whether occurring in public or private life', and enumerates a number of different specific types of violence.[47] In addition, it confirms VAW as 'the result of an imbalance of power between men and women' resulting in 'serious discrimination'.[48]

Moreover, Rec(2002)5 refers to 'multiple discrimination', suggesting one specific combination of grounds and specific consequences:

[44] Rec(2002)5, footnote 5.

[45] CoE Statute, 15.a.

[46] The results of the Fourth Round of monitoring implementation of the recommendation is available at:`http://www.coe.int/t/dghl/standardsetting/equality/03themes/violence-against-women/Analytical%20Study%20ENG.pdf` [accessed 8 December 2014].

[47] See the Appendix to Recommendation Rec (2002)5.

[48] Rec(2002)5, footnote 5, preamble.

> women are often subjected to multiple discrimination on ground of their gender as well as their origin, including as victims of traditional or customary practices inconsistent with their human rights and fundamental freedoms.[49]

States are called to 'recognise' that they have 'an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims'.[50] In addition, Rec(2002)5 makes a number of recommendations to States, yet it also clarifies that they can adopt them 'in the manner they consider the most appropriate in the light of national circumstances and preferences'.[51] It calls on Member States to 'review their legislation and policies' to guarantee women the recognition, enjoyment, exercise and protection of their human rights and to adopt necessary measures to ensure that women are able to exercise freely and effectively their economic and social rights. In general terms, these measures need to be focused on the needs of victims, be adopted nation-wide, and to engage both public institutions and Non-Governmental Organisations (NGOs) in the implementation.

The recommendation provides in its Appendix a list of general measures concerning violence against women and states that:

> It is the responsibility and in the interest of states as well as a priority of national policies to safeguard the right of women not to be subjected to violence of any kind or by any person. To this end, states may not invoke custom, religion or tradition as a means of evading this obligation.

Regarding the general measures, States should implement national policies against violence providing maximum safety and protection of victims, empowering them by providing support and assistance that prevents secondary victimisation. They should also modify criminal, civil and procedural law. In addition, States need to promote awareness raising and education of children and young persons and provide special training for professionals. Furthermore, each of these general measures is specified in detail, clarifying what kind of measures are expected from States.

Several of those specific measures make references to vulnerability and specific groups, yet not necessarily suggesting an 'intersectional approach' since they do

[49] Ibidem.
[50] Rec(2002)5, II.
[51] Rec (2002)5, para VIII.

not really refer to categories of difference that are the result of structural and social constructions. Instead, references of vulnerability seem all directed to address 'physical' vulnerabilities. For instance, measures in the field of criminal law include the criminalisation of any abuse 'of the vulnerability of a pregnant, defenceless, ill, physically or mentally handicapped or dependent victim'.[52] Some recommendations also suggest focusing on specific groups. For instance, groups of particular immigrants and refugees need to be the focus of information and prevention campaigns for Female Genital Mutilation (FGM). A similar call is made in relation to 'killings in the name of honour'.[53] Yet these recommendation do not address the underlying elements contributing toward the violence, rather they deal with the group as a given.

Finally, regarding prevention measures, States should also promote research, data collection and national and international 'networking',[54] promote the establishment of higher education programmes and research centres dealing with equality issues and violence against women,[55] and 'improve interactions' between the scientific community, NGOs, decision-makers and other public bodies in order to design co-ordinated actions against violence.[56]

4.2.3 The Convention on Preventing and Combating Violence against Women and Domestic Violence.

The Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), opened for signature in May 2011, and it entered into force on 1 August 2014, after getting the ratification of ten Member States. To date, 22 CoE Member States have signed the Convention and 14 have ratified it.[57] Unlike the ECHR, the Istanbul Convention does not create a system of individual complaints for violations to the Convention to be adjudicated by the ECtHR. The compliance of State parties that have ratified the Convention will be

[52]Appendix to Recommendation Rec (2002)5, para 35.
[53]Ibid, para 81.
[54]Ibid, V.
[55]Ibid, VI.
[56]Ibid, VII.
[57]See the current state of ratifications at: `http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=210&CM=1&DF=&CL=ENG` [accessed 8 December 2014].

evaluated by the monitoring mechanism of the Convention, the 'Group of experts on action against violence against women and domestic violence' (Grevio).[58]

In the same line with the rest of the international human rights documents dedicated to VAW, the Istanbul convention stresses that VAW is 'gender-based' and of a 'structural nature', and that it is a 'manifestation of historically unequal power relations between women and men'.[59] It defines VAW as:

> Violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.[60]

It also introduces a definition of gender, generally overlooked in other documents, stating that it refers to 'the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men'.[61] This gendered perspective of VAW introduces a clear change in relation to approach taken by the ECHR which adopts a formal equality perspective, as discussed above. Yet the definition of 'gender' seems unconnected to the definition of 'gender-based violence', since it provides the old circular definition of GR 19, saying that it is 'violence directed against women because she is a woman, or that affects women disproportionally.'[62]

Regarding the level of resemblance of an intersectionality approach as suggested in this thesis, the Istanbul convention introduces limited changes. The Convention prohibits discrimination against women, and it incorporates a prohibition of discrimination clause that, in comparison to article 14 of ECHR, expands the number of protected grounds listed. Article 4.3 reads:

> The implementation of the provisions of this Convention by the Parties, in particular measures to protect the rights of victims, shall be secured without discrimination on any ground such as sex, gender, race, colour, language, religion, political or other opinion, national or social origin, association with a national

[58]Ibid, article 66.
[59]Istanbul Convention, footnote 6, preamble.
[60]Ibid, article 3.a.
[61]Ibid, article 3.c.
[62]Ibid, article 3, d.

> minority, property, birth, sexual orientation, gender identity, age, state of health, disability, marital status, migrant or refugee status, or other status.

Thus, women, since they are the ones protected in the Convention, are not to be discriminated based on these grounds. Arguably, if the application of this clause is made in relation to 'indirect discrimination', as explained in subsection 4.2.1, calling for special measures, then a potential intersectional approach is possible, yet it does not appear as a substantial improvement in relation to the ECHR. If this clause is used in connection to direct discrimination only, then the adoption of intersectional approach as suggested in this thesis very limitedly captured.

The doubt whether the non-discrimination clause will imply an intersectional approach to VAW or not may appear somehow enforced by the absence of any explicit reference to intersectionality, or even to 'multiple' or 'intersecting discrimination'. Nevertheless, there are some references to 'vulnerability', for instance, in relation to the implementation of prevention measures[63] or measures for protection and support.[64] Furthermore, abusing the vulnerability of a person is also reason for an aggravated sanction.[65] The phrase used, 'persons made vulnerable by particular circumstances', without making references to 'physical' aspects like those mentioned in Rec (2002)5,[66] may facilitate a more social and structural construction of vulnerability instead of addressing it as a 'fixed' or 'inherent' characteristic of certain groups or individuals. Moreover, although limited in number, these references to vulnerability are reflected in the output of the Convention: the arising duties of States.

With a rather confusing approach, the Istanbul Convention establishes that State parties have an obligation to exercise 'due diligence to prevent, investigate, punish and provide reparation' for acts of violence perpetrated by non-State actors. This reference thus, appears to use the principle of due diligence to confirm the imputability of the State for non-State actors, yet apparently the intention was also to emphasise that States must use their own discretion in making sure that they are, indeed, taking all necessary steps to achieve those goals. Although state agents would be covered in the first part of the article, calling States to 'refrain from engaging', the possibility to use discretion to evaluate compliance may later be interpreted restrictively, covering the acts of non-state actors only.

[63] See: Istanbul Convention, article 12. 3.
[64] Ibid, article 18. 3.
[65] Ibid, 46. c.
[66] See: section 4.2.2 on page 183.

The Istanbul Convention recognises the 'right to live a life free from violence in both the public and the private sphere' and it creates, a long list of duties for States. An extensive analysis of all these duties exceeds the purpose of this section, so I will briefly point out the most overarching sets of duties. For instance, the Convention requires States to implement an integrated policy and collect data, to prevent the violence by promoting changes in the social and cultural patterns of behaviour, to provide protection and support for the victims, such as establishing shelters, helplines and providing specialised support services, and finally, to adopt a number of substantive laws, among other, recognising specific forms of VAW within the domestic legislation, providing for adequate remedies, establishing sanctions, and prohibiting unacceptable justifications for the violence, providing reparation, etc.

Considering the phrasing of these articles and the use of the word 'shall', the majority of the duties created seem to fall under the category of legally binding obligations. There are few references in relation to the way of implementation of some of those obligations, suggesting a certain level of flexibility. For instance, article 45.2 allows State to take 'additional measures', besides 'punishable by effective, proportionate and dissuasive sanctions' for acts of VAW:

> Parties may adopt other measures in relation to perpetrators, such as:
>
> - Monitoring or supervision of convicted persons;
> - Withdrawal of parental rights, if the best interests of the child, which may include the safety of the victim, cannot be guaranteed in any other way.

4.2.4 Interpretation and Adjudication

In this section, the analysis of the provisions of the ECHR ,discussed in subsection 4.2.1, will be completed by the analysis of case law. Among all the cases brought to the ECtHR dealing with VAW, domestic violence and sexual violence are the two types of violence bringing the majority of individual petitions. This section will focus on domestic violence, in the hope that the views of the Court on this type of violence will contribute to show its general position toward VAW. Furthermore, considering that it is the same type of violence discussed in relation to the CEDAW Committee's view, it will allow for a comprehensive view throughout the thesis.

At the time of writing, the Court has admitted and found violations in ten cases of domestic violence, all of them decided *after* 2006, a date seemingly crucial in inspiring an intersectional approach, at least at the level of the United Nations (UN). The scope of these cases varies greatly, involving cases of death, ill-treatment and property claims.

In dealing with the cases, and in the absence of a definition of domestic violence in the ECHR, the Court has provided some interpretation as certain constitutive elements of this type of violence. For instance, in *Opuz v. Turkey*,[67] the Court clarified that domestic violence can take various forms 'ranging from physical to psychological violence or verbal abuse'. In *Valiulienè v. Lithuania*,[68] the Court emphasised the psychological aspect of the violence, regardless of the existence of physical violence:

> The Court cannot turn a blind eye to the psychological aspect of the alleged ill-treatment. It observes that the applicant made credible assertions that over a certain period of time she had been exposed to threats to her physical integrity and had actually been harassed or attacked on five occasions. The Court acknowledges that psychological impact is an important aspect of the domestic violence.[69]

In addition, repeated violent behaviour towards the victims concerning the same perpetrator, in particularly when these episodes are frequent, are considered by the Court as a continuous situation. For instance, in *A. v. Croatia*, the Court understood that frequent episodes of violence, involving verbal and physical violence, including serious death threats, hitting and kicking the applicant in the head, face and body, causing her injuries, occurring in a period amounting to some two years and seven months occurred in a continual manner.[70] Furthermore, in *Valiulienè v. Lithuania*, the Court considered that five instances of ill-treatment of the applicant, stretching over a period of time, constituted a continuing situation, and that was to be considered as 'an aggravating circumstance.'[71]

In relation to the connection between domestic violence and discrimination, the Court has addressed it in only three cases so far. The ground breaking decision in this respect is *Opuz v. Turkey*. In this case, the Court considered that, in the

[67] ECtHR, *Opuz v. Turkey*, Application no. 33401/02, 9 June 2009.
[68] ECtHR, *Valiulienè v. Lithuania*, Application no. 33234/07, 26 of March 2013.
[69] Ibid, para 69.
[70] ECtHR, *A. v. Croatia*, application no. 55164/08, 14 October 2010.
[71] *Valiulienè v. Lithuania*, footnote 68.

elaboration of the meaning of discrimination in the context of domestic violence, 'in addition to the more general meaning of discrimination as determined in its case-law, the Court has to have regard to the provisions of more specialised legal instruments and the decisions of international legal bodies on the question of violence against women'.[72] It thus took into account CEDAW article 1 and the work of the CEDAW Committee, the resolution 2003/45 of the United Nations Commission on Human Rights, the Belém do Pará Convention, and the Inter-American Commission's decision on *Maria da Penha v. Brazil*. Based on these documents, the Court concluded that:

> The State's failure to protect women against domestic violence breaches their right to equal protection of the law and that this failure does not need to be intentional.[73]

The applicant had claimed that the approach to domestic violence adopted in Turkey was discriminatory. She argued that discrimination was not based on the legislation per se but rather resulted from the general attitude of the local authorities, such as the manner in which the women were treated at police stations when they reported domestic violence and the judicial passivity in providing effective protection to victims. She introduced different elements to demonstrate this claim of indirect discrimination, such as reports and statistics prepared by two leading NGOs, one based in Turkey and one report by Amnesty International. An important element in relation to the probatory value of these evidentiary documents was that the findings and conclusions of these reports were not challenged by the Government at any stage of the proceedings.

Consequently, there were concrete signs of discriminatory treatment according to the Court. Firstly, in relation to the characteristics of the victims, the Court noted that they fitted the description of women suffering violence disproportionally in Turkey: they were living in the same district, were victims of physical violence, of Kurdish origin, illiterate or of a low level of education and generally without any independent source of income.[74] Secondly, there were serious problems in the implementation of Law: irregularities in relation to reporting, lack of investigation of cases, and public authorities tended to act 'as mediators', trying to convince women to withdraw the complaint. Also, domestic violence was treated as a family

[72] *Opuz v. Turkey*, footnote 67, 185.
[73] Ibid, para 191.
[74] Ibid, para 194.

matter, instead of an issue of public interest. In addition, there were delays in issuing injunctions since those requests were often treated as a request for divorce and not as an in urgent need of protection. Furthermore, the Turkish system did not impose really dissuasive punishment. Based on these elements, the Court considered that domestic violence was tolerated by the authorities and that the remedies indicated by the Government did not function effectively. It concluded:

> In the light of the foregoing, the Court considers that the applicant has been able to show, supported by unchallenged statistical information, the existence of a prima facie indication that the domestic violence affected mainly women and that the general and discriminatory judicial passivity in Turkey created a climate that was conducive to domestic violence.[75]

Similarly, in the recent case of *Eremia v. The Republic of Moldova*, the applicants claimed that the Moldovan authorities 'had failed to take appropriate action aimed at preventing domestic violence, protecting from its effects, investigating the complaints and punishing the perpetrator. They thus promoted further violence from A., who felt immune to any State action. The violence was gender-based and amounted to discrimination'.[76] They substantiated the claim arguing that there was 'well-established evidence that domestic violence impacted disproportionately and differently upon women,' and as such,'if it was to be effectively tackled, such violence demanded a particular response, which included treating such violence as a form of gender-based discrimination.'[77]

Judge Pinto de Albuquerque argued similarly in his dissenting opinion in the case of *Valiulienė v. Lithuania*:

> the full *effet utile* of the ECHR can only be achieved with a gender-sensitive interpretation and application of its provisions which takes in account the factual inequalities between women and men and the way they impact on women's lives.[78]

This gendered understanding of domestic violence seems to challenge the approach taken by the Court just a few years earlier in *Opuz v. Turkey*, when the Court felt it 'must stress' that 'it is not only women who are affected' by domestic violence, but 'men may also be the victims of domestic violence and, indeed, that children,

[75] Ibid, 198.

[76] ECtHR, *Eremia v. The Republic of Moldova*, application no. 3564/11, 28 May 2013, para 82.

[77] Ibid, para 84.

[78] *Valiulienè v. Lithuania*, footnote 68, 30.

too, are often casualties of the phenomenon, whether directly or indirectly.'[79] With only three cases addressing the discriminatory aspect of domestic violence, it is not yet clear whether the Court is moving towards an understanding of VAW as a form of gender based discrimination, as established at UN level.

The case of *Eremia v. The Republic of Moldova* clarifies further the Court's analysis in order to determine a violation of article 14 in relation to domestic violence. Clearly inspired by the analysis of *Opuz*, in this case, the Court based its conclusion on the following aspects:

- The authorities were well aware of the violence against the applicant, yet her case was not treated with urgency;[80]
- The first applicant was called to the local police station and was allegedly pressured to withdraw her complaint;[81]
- The Social Assistance and Family Protection Department had failed to enforce the protection order and suggested reconciliation, saying the applicant was 'not the first nor the last woman to be beaten up by her husband';[82]
- Having confessed to beating up his wife, the abuser was essentially shielded from all responsibility following the prosecutor's decision to conditionally suspend the proceedings.[83]

These aspects led the Court to conclude that 'the authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman.'[84]

Conversely, in *A. v. Croatia* the Court found no violation of article 14 due to lack of prima facie evidence of discriminatory treatment, considering the same basic elements:

> The applicant did not submit reports in respect of Croatia of the kind concerning Turkey in the *Opuz case*. There is not sufficient statistical or other information

[79] *Opuz v. Turkey*, footnote 67, para 132.
[80] *Eremia v. The Republic of Moldova*, footnote 76, para 86.
[81] Ibid, para 87.
[82] Ibidem.
[83] Ibid, para 88.
[84] Ibid, para 89.

> disclosing an appearance of discriminatory treatment of women who are victims of domestic violence on the part of the Croatian authorities such as the police, law-enforcement or health-care personnel, social services, prosecutors or judges of the courts of law. The applicant did not allege that any of the officials involved in the cases concerning the acts of violence against her had tried to dissuade her from pursuing the prosecution or giving evidence in the proceedings, or that they had tried in any other manner to hamper her efforts to seek protection.[85]

Nevertheless, some Court findings in *A. v. Croatia* seem in contradiction with the approach adopted in more recent case law and the Istanbul Convention. For instance, the Court found in this case that having only minor offences dealing with domestic violence is not per se discriminatory and that the applicant's allegation that the training of relevant experts was insufficient was not supported by relevant examples, data or reports. Also, the statistics concerning the implementation of protective measures were regarded as 'incomplete and unsupported by relevant analysis,' and that 'the only worrisome data is that out of 173 sets of minor offences proceedings conducted in 2007 in connection with incidents of domestic violence, in 132 sets of proceedings both spouses were found guilty.' This was also not considered relevant because 'no such findings were made in the cases concerning the applicant.'[86]

Thus far, the Court's stance toward structural vulnerability and violence is not consistent, at least when such vulnerability is connected to gender. This is made explicit in *Valiulienė v. Lithuania*.[87] Other forms of vulnerability, however, are rarely included in these cases. In *Eremia v. The Republic of Moldova*, the Court has addressed the vulnerability of women being battered by a partner who is a police officer:

> She was a particularly vulnerable person since her aggressor was a police officer and had the support of his colleagues and other local authorities, which made her attempts to obtain protection more difficult.[88]

In some cases, the Court has made reference to the vulnerability of victims of domestic violence and the need for protection.[89] In *Opuz v. Turkey*, the Court

[85] *A. v. Croatia*, footnote 70, para 97.
[86] Ibid, para 103.
[87] See also, *Valiulienė v. Lithuania*, footnote 68, para 69.
[88] *Eremia v. The Republic of Moldova*, footnote 76, para 40.
[89] See: ECtHR, *Bevacqua and S. v. Bulgaria*, application no. 71127/01, 12 June 2008, para 65.

made reference to 'vulnerable individuals', and considered the applicant as such, because of 'her social background', pointing to the 'situation of woman in South-east Turkey'.[90] This is the only reference so far suggesting that the Court seems to take a more 'structural' view of vulnerability, at least in relation to domestic violence.

Besides these few references to vulnerability, no references to the influence of other categories are made by the Court, nor any references to 'multiple' or 'intersectional' discrimination. No explicit references to intersectionality can be found either.

The scope of the ECHR provisions discussed above must now be illustrated in relation to domestic violence. Five cases are particularly relevant in relation to the right to life. As commented earlier, the combination of article 1 of the ECHR with other provisions of the Convention, sets positive obligations on States, calling them to implement measures that protect from and ensure the enjoyment of the rights and freedoms. In the case of article 2, as commented above, the Court has clarified that the State must:

1. Implement effective criminal-law provisions;
2. Establish a law-enforcement machinery;
3. Provide preventive operational measures to protect an individual whose life is at risk, when authorities know, or should have known about the risk.

Minimum requirements concerning the first two aspects, that is, pointing to 'effective criminal law provisions' and their enforcement appear to be:

- Recourse to the criminal law, unless the violation is not caused intentionally, where the obligation may be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts.[91]
- Effective official investigation of cases of murder by use of force of State officials or private individuals:
  - purpose of the investigation: capable of leading to the establishment of the facts of the case and to the identification and punishment of those responsible;
  - promptness and reasonable expedition;[92]

[90] *Opuz v. Turkey*, footnote 67, para 160.
[91] ECtHR, *Branko Tomasic and Others v. Croatia*, application no. 46598/06, 15 January 2009.
[92] *Opuz v. Turkey*, footnote 67.

– deficiencies in the investigation obstructing the discovery of the cause of death, or identify the perpetrators, will not meet this standard.[93]

– Authorities must act on their own motion once the matter has come to their attention.[94]

In *Opuz v. Turkey*, the Court connected three main elements with the exercise of due diligence to prevent the death of the applicant's mother: the approach of the authorities toward ex-officio prosecution when victims withdraw their formal complaints and the detention of the perpetrator, and finally, the adoption of other protective measures.

Regarding the ex-officio prosecution when victims withdraw their formal complaints, the Court pointed out in *Opuz v. Turkey* that there is no general consensus among Member States. Nevertheless, there seems to be a duty on the part of the authorities to strike a balance between Article 2, Article 3 or Article 8 and the victims' rights in deciding on a course of action. The general idea being that the more serious the offence or the greater the risk of further offences, the more likely that the prosecution should continue in the public interest.[95] Based on the practices in the Member States, the Court has highlighted certain factors that can be taken into account in deciding:

- The seriousness of the offence;
- Whether the victim's injuries are physical or psychological;
- Use of a weapon;
- Threats following the attack;
- The attack was planned;
- Effect on children living in the household;
- Chances of re-offending;
- The current state of the victim's relationship with the defendant and the effect of continuing with the prosecution against the victims wishes;
- Violence in the past; and

[93] *Branko Tomasic and Others v. Croatia*, footnote 91.
[94] Ibid.
[95] *Opuz V. Turkey*, footnote 67, para 139.

- The defendant's criminal history.

In relation to the detention of suspects, the Court has stressed that in domestic violence cases perpetrators' rights cannot supersede victims' human rights to life and to physical and mental integrity.[96] In any event, other protective measures need to be considered, such as an injunction with the effect of banning the abuser from contacting, communicating with or approaching the victim or entering defined areas.[97]

Concerning the final aspect constitutive of article 2, whether or not the risk of violation was known, and whether measures where adopted, the Court has found that emergency calls to the police, reporting the violence, and requesting protection measures are actions that suggest the authorities know of a case of violence. This perception is even stronger if, furthermore, proceedings have been initiated, there is an indictment or a report pointing to the dangerous characteristics of the perpetrator. The Court has clarified an array of specific obligations arising for the police, including, inter alia, accepting and duly registering the criminal complaint of a victim; launching a criminal investigation and commencing criminal proceedings immediately; keeping a proper record of the emergency calls and taking action in respect to allegation of weapons possession and violent threats with them.[98]

Regarding article 3, inhuman treatment, the Court has established the connection to domestic violence in a number of cases. In *Opuz*, the Court explained what is needed in order to constitute 'ill-treatment' within the meaning of article 3:

> Ill-treatment must attain a minimum level of severity. This minimum is relative: it depends on all the circumstances of the case, such as the nature and context of the treatment, its duration, its physical and mental effects and, in some instances, the sex, age and state of health of the victim.[99]

Furthermore, treatment is 'inhuman' because, inter alia, it is premeditated, applied for hours at a stretch and cause bodily injury or intense physical and mental suffering. Treatment is considered 'degrading' when it arouses in its victims feelings of fear, anguish and inferiority, capable of humiliating and debasing them and

[96] Ibid, para. 147.
[97] Ibid, para. 148.
[98] See: ECtHR, *Kontrová v. Slovakia*, application no. 7510/04, 31 May 2007; *Branko Tomasic and Others v. Croatia*, footnote 91.
[99] *Opuz v. Turkey*, footnote 67, para 158.

possibly breaking their physical or moral resistance.[100] It is in connection to these elements that the elements of domestic violence actually become of relevance. In *Valiulienė v. Lithuania*, the Court has considered the character of the injuries, the view of domestic violence as a continuum and the severe psychological effect of this type of violence as amounting to inhuman and degrading treatment.[101]

One interesting aspect is that, although claims of domestic violence are often based on a violation of article 3, in many cases, the Court does not enter in the analysis of the breach, relying instead, for instance, in article 8 on the protection of family life. In the dissenting opinion of *Valiulienė v. Lithuania*, judge Pinto de Albuquerque argues that:

> It is self-evident that the very act of domestic violence has an inherent humiliating and debasing character for the victim, which is exactly what the offender aims at. Physical pain is but one of the intended effects. A kick, a slap or a spit is also aimed at belittling the dignity of the partner, conveying a message of humiliation and degradation. It is precisely this intrinsic element of humiliation that attracts the applicability of Article 3 of the Convention. The imputation of an Article 8 violation would fall short of the real and full meaning of violence in the domestic context, and would thus fail to qualify as a 'gendered understanding of violence'.[102]

In relation to article 5, that is, the right to liberty and security of person, as expected in the previous section, although some cases have claimed a violation to this provision, the Court has not yet found such violation in relation to domestic violence.[103]

The majority of the cases of domestic violence in this review have claimed a violation to the right to private and family life, protected by article 8. The Court has clarified that the concept of private life includes a person's physical and psychological integrity, which the States have a duty to protect, even if the danger comes from the acts of others. They must thus provide an adequate legal framework for the protection against acts of violence by private individuals.[104] This inclusion of the physical and psychological integrity explains why article 8 seems to be the most preferred provision of the ECHR to base (and accept) individual petitions

[100] *Valiulienė v. Lithuania*, footnote 68.
[101] Ibid, paras 67-70.
[102] *Valiulienė v. Lithuania*, footnote 68, 29.
[103] See, for instance: ECtHR, *ES. And Others v. Slovakia*, application no. 8227/04, 15 September 2009 and *Hajduová v. Slovakia*, application no. 2660/03, 30 November 2010.
[104] *Eremia v. The Republic of Moldova*, footnote 76, para 73.

before the Court. It allows to claim violations even in the absence of a threat to the life as required by article 2, and the threshold of ill-treatment as covered by article 3, including 'inhuman' and 'degrading' treatment. Yet, the chronic suffering that most cases of domestic violence entail seem to somehow 'exceed' the scope of the provision, and it is in this regard that the argument of Judge Pinto de Albuquerque comes to mind. Nevertheless, the Court's view today seems to favour article 8 over 3 in this respect.

This brief discussion of article 8 concludes this review of case law of the Court. It appears that the approach of the Court toward domestic violence, even though this is the type of violence that most cases of VAW deal with, and after decades of case-law elaboration, is still not truly in line with international standards on VAW as elaborated by the UN. Although a change of approach seems to be on its way, particularly after *Opuz*, this is still in the making.

4.2.5 Final observations on the Council of Europe

In this section, three normative documents have been analysed: the ECHR[105], Recommendation Rec (2002)5[106] and the Istanbul Convention.[107] The approach taken by these normative documents and the Court is illustrated in Figure 4.1. When analysed through the 'intersectional lens', the ECHR does not include any explicit or implicit references to intersectionality. It enumerates a number of social categories of difference as 'protected grounds' in relation to the prohibition of non-discrimination of article 14, yet, the application of a seemingly intersectional approach seems to require the determination of indirect discrimination, calling for the adoption of temporary special measures to re-balance the situation of intersecting inequality.

Regarding the possibility to claim discrimination on the basis of more than one protected ground, suggesting 'multiple' or 'intersectional' discrimination, the analysis of case law on domestic violence did not reveal such possibility. Nor did 'vulnerability' really emerge as a way of promoting a 'social contextual approach' toward discrimination. Only one case seemed to adopt a more 'structural' approach to discrimination. In any case, the analysis of the jurisprudence of the Court has

[105]ECHR, subsection 4.2.1.
[106]Rec (2002)5, subsection 4.2.2.
[107]Istanbul Convention, subsection 4.2.3.

shown how even the view of VAW, more precisely, domestic violence, as a form of gender discrimination is still not clearly established. Perhaps the analysis of other forms of discrimination and violation of rights may yield different result, yet in terms of violence against women, the revealed approach is not congruent with intersectionality.

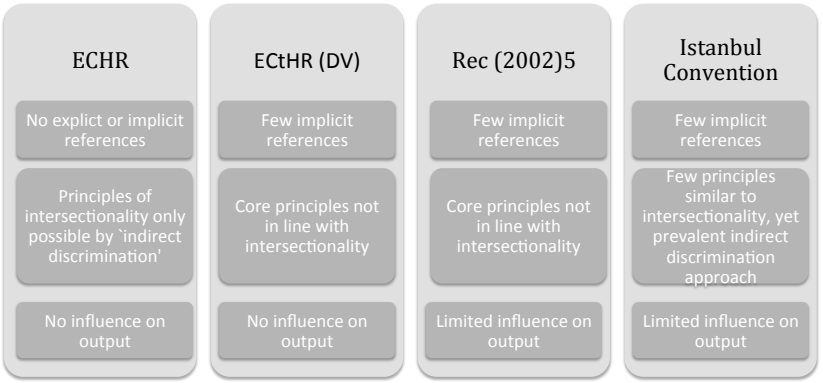


FIGURE 4.1: Council of Europe: resemblance of intersectionality

Recommendation Rec (2002)5 seems to introduce a few changes. It recognised 'multiple discrimination', although in relation to two specific grounds only, and in relation to one particular type of VAW. It also made references to 'vulnerability', yet this vulnerability is not addressed as 'structural', rather as something connected to physical characteristics. Nevertheless, these 'vulnerabilities' are to some extent considered in the recommendations.

Finally, the Istanbul Convention. From an intersectionality perspective, the Convention does not appear as a great contribution. Perhaps inspired by the ECHR, it adopts a 'non-discrimination' approach, again making an intersectional approach dependent on the finding of 'indirect discrimination'. In addition, there are no references to multiple or intersecting discrimination. There are references, however, to individuals of 'special vulnerability'. In this respect, there is an improvement over Recommendation Rec (2002)5 since there is no clear connection to 'physical' vulnerabilities, making it possible to take a more structural understanding of it.

4.3 The Inter-American system

The Inter-American System has developed throughout the years an institutional framework dealing specifically with women's human rights. In this respect, we find

specialised bodies, such as the Inter-American Commission of Women (IACW) and the Rapporteur on the Rights of Women (RRW), with similar tasks to their counterparts in the United Nations (UN). As such, the IACW, established in 1928, formulates policy on women's rights and gender equality, while the RRW has published studies on particular issues, helping to develop new jurisprudence on this subject and supporting research on various issues that affect the rights of women in specific countries of the region.

In relation to the normative framework in particular, the Organization of American States (OAS) has achieved State consensus and adopted a dedicated legally binding convention, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention).[108] In addition to the existence of a dedicated convention, the American Convention on Human Rights (ACHR)[109] is also applicable to cases of VAW. In light of the need to provide a comprehensive interpretation of the human rights conventions, and taking into account the purpose and object of the instruments, both instruments are overseen by the system of individual petitions before the IACtHR. This combined application of documents to cases will be elaborated more in detail below. In addition, as commented in chapter 1, the decisions of the IACtHR can be considered as subsidiary sources of law, even when there is no doctrine of judicial precedent in international law in technical terms.

The functioning of the IACtHR should be briefly explained here. While the Court is the judicial body of the system dealing with all contentious cases against States in relation to human rights violations, individuals cannot submit their claims directly. These must be presented to the Commission, which will make a formal and substantial assessment, and if appropriate, submit the case to the Court. The Commission will then act as applicant to the case before the Court, next yet not together with the victims' representative. The Commission may also decide the case in its substance and issue recommendations to the State, which although decided by a 'quasi-judicial' body, are regarded as authoritative. This chapter will

[108]Organisation of American States (OAS), Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belem do Para'), 9 June 1994, available at: `http://www.refworld.org/docid/3ae6b38b1c.html` [accessed 8 December 2014].

[109]Organisation of American States (OAS), American Convention on Human Rights ('Pact of San Jose'), Costa Rica, 22 November 1969, available at: `http://www.refworld.org/docid/3ae6b36510.html` [accessed 8 December 2014].

pay attention primarily to the Court, and only limitedly to Commission.[110]

4.3.1 The American Convention

The American Convention on Human Rights,[111] adopted in 1969, is directly applicable to cases of VAW. Although this Convention can be expected to be used as an source alternative to the Belem do Para Convention in cases of VAW when this one is not applicable due to, for instance, lack of ratification, the IACtHR regularly makes reference to both Conventions in combination.

Similar to the ECHR, the American Convention emphasises the principle of equality and non-discrimination based on 'race, colour, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition'.[112] Thus, in this regard, the discussion on direct and indirect discrimination of subsection 4.2.1 is of application in relation to the American Convention as well. There are no explicit references to intersectionality, nor references to multiple, intersecting or compounded discrimination. Neither are there references to 'vulnerability'. Nevertheless, article 13 refers to some 'groups':

> Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offences punishable by law.[113]

Similarly, it recognises that the life and personal freedom of individuals might be in danger in their country of origin because of his or her 'race, nationality, religion, social status, or political opinions' and thus, States cannot deport them.[114] There is, thus, the implicit recognition that persons and groups can be subject to

[110]There have been some discussions in the past on whether compliance with the Belem do Pará Convention can lead to the judicial assessment of contentious cases lodged by individuals, given that it states that 'persons, group of persons or any non-governmental organisations may lodge their petitions to the Commission' (Belem do Para Convention, footnote 108 article 12). However, the Commission shall consider individual claims according to the common procedure, which entails making an assessment and referring the claim to the Court, if conditions are met. This understanding has been supported by the jurisprudence of the Court, confirming that the Convention can be the matter of direct judicial interpretation.

[111]See: American Convention, footnote 109.

[112]Ibid, article 1.

[113]Ibid, article 13.5.

[114]Ibid, article 22. 8.

differential treatment based on a number of grounds, leading to the prohibition to discriminate or to take any action similar 'waging war' or promoting hatred against them. However, while 'sex' is mentioned in the prohibition of discrimination of article 1, it is excluded in the prohibition of article 13. Considering the approach toward social categories of difference, thus, the American Convention seems to rather deny the existence of any difference, than calling on States to adopt differentiated measures in order to properly addressed those differences.

Adopted in 1969, the American Convention follows the lead of International Covenant on Civil and Political Rights (ICCPR),[115] and as such, it recognises 'rights' but does not clearly state the 'obligations' of States. The main entitlements applicable in cases of VAW are the *right to life*,[116] covering attempts against the life and physical integrity of women, regardless of the motives, and the *right to humane treatment*,[117] which has been profusely used, mostly in cases where the perpetrators were state agents. Article 6 provides protection against forms of slavery, including forced labor and 'traffic in women', with no explicit reference to sexual exploitation. Another protective entitlement included in the convention is the *right to personal liberty*,[118] equally applicable in cases where the perpetrator is a private actor or a state agent and whether deprivation of liberty is unlawful or only irregular. In addition, the *'right to privacy'*,[119] (Protection of Honour and Dignity, in Spanish), has been interpreted by the Court as protecting the sexual life of a person. Finally, the Right to *judicial protection*,[120] can be applied for ensuring access to justice in cases of VAW.

Considering the letter of the law, there is no formal limitation for applying these entitlements to women, yet except article 11 and to some extent, article 5, the majority of these entitlements are designed to protect individuals 'in the public sphere', at the hand of public agents. Even article 4, protecting the right to life, focuses on the 'arbitrary deprivation of life' and death penalty. However, much of the interpretation of the rights embodied in the ECHR are similarly applicable here. This explains why article 11 on privacy is being used by the Court to protect sexual integrity, which is not directly protected by the Convention, considering it

[115]UN General Assembly, International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: `http://www.refworld.org/docid/3ae6b3aa0.html` [accessed 8 December 2014].
[116]American Convention, footnote 109, article 4.
[117]Ibid, article 5.
[118]Ibid, article 7.
[119]Ibid, article 11.
[120]Ibid, article 25.

as part of the 'honour and dignity' of women. Although an strict comparison with the CoE will not be possible, the cases below will illustrate the current use of this Convention in cases of violence against women.

4.3.2 Inter-American Convention 'Belem Do Para'

The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention) was adopted in 1994, entering into force in 1995. Having been adopted after CEDAW General Recommendation 19,[121] the Declaration on the Elimination of Violence against Women (DEVAW)[122] and the Vienna Declaration and Programme of Action (VDPoA),[123] Belem do Pará also positions VAW as a violation of human rights violation and an offence to human dignity.[124] It also confirms the patriarchal approach to VAW and views violence as contrary to the individual and social development and equal participation of women in society.[125]

VAW is understood as the 'acts or conducts, based on gender' which cause death, harm or suffering to women.[126] Article 2 clarifies that VAW includes physical, psychological and sexual violence regardless of whether that occurs, or whether it is perpetrated or condoned by the State and its agents. Nevertheless, economic harm is not explicitly included in the definition. Article 2 further provides an account on what sort of acts and conducts constitute such violence. Battering, rape and sexual abuse are included in connection to the family domain but also as forms of violence taking place in the community. Trafficking and forced prostitution are also included as forms of VAW, and some other forms can be traced to the particular history of the continent, such as kidnapping and torture. Sexual harassment is also mentioned, indirectly connected to the domains of employment, education and health.

[121]CEDAW Committee, General Recommendation No 19: Violence against Women, adopted at the Eleventh Session, 1992 (contained in Document A/47/38), 1992, A/47/38. See: chapter 3, section 3.2.

[122]United Nations General Assembly, Declaration on the Elimination of Violence against Women, 20 December 1993, A/RES/48/104. See: chapter 3, section 3.3.

[123]United Nations, Vienna Declaration and Programme of Action, 12 July 1993, A/-CONF.157/23, chapter 3, subsection 3.5.1.

[124]Belem do Para Convention, footnote 108, preamble.

[125]Ibidem.

[126]Ibid, article 1.

Inspired by the limitations of the American Convention in order to address the rights of women and in the absence of a regional declaration recognising them, Belem do Pará declares women's entitlement to free and full exercise of human rights[127] and the right to 'recognition, enjoyment, exercise and protection' of such rights.[128] Some of the rights included in this enumeration were not included in GR 19, but seem to suit the particularities of the region at that time:

- The rights to have the inherent dignity of her person respected and her family protected;
- The right of freedom to profess her religion and beliefs within the law;
- The right to associate freely;
- The right to have equal access to the public service of her country and to take part in the conduct of public affairs, including decision-making.

Probably inspired by the Catholic tradition, the first two rights seem also especially important for minority and indigenous women, while the last two, of a clear civil and political nature, seem crucial rights in relation to women, in the aftermath of the numerous repressive military dictatorships that took place in the region, some lasting until the mid 90s.

Unlike CEDAW, Belem do Pará explicitly recognised the 'right to live free from violence in both the public and the private sphere'.[129] Such right include the right to live a life free from 'all forms of discrimination'.[130] Hence, similar to GR 19, the connection between VAW and discrimination is again confirmed. It also includes the right to be valued and educated 'free from stereotyped patterns of behaviour and social and cultural practices' based on concepts of inferiority of women.[131]

In relation to the duties of States, the Convention includes two types of obligations, some that must be adopted *without delay* and with 'due diligence'[132], and some which must be undertaken *progressively*.[133] These measures are captured in Table **??**.

[127]Ibid, article 5.
[128]Ibid, article 4.
[129]Ibid, article 3.
[130]Ibid, article 6.
[131]Ibidem.
[132]Ibid, art. 7.
[133]Ibid, article 8.

Implementation	**Main obligation**	**General Content**	**Concrete measures**
Immediate	Condemn VAW		
	Pursue policies	Refrain from engaging in VAW Apply due diligence Include legal provisions and administrative measures Adopt protective legal measures Take measures to modify legal or customary practices	
		Effective legal procedures	Protective measures Timely hearing Effective access
		Restitution, reparation and other remedies All measures to give effect to the Convention	
Progressive	Specific measures and programmes	Promote awareness and observance of the rights of women	
		Modify social and cultural patterns	Informal and formal education programmes
		Promote education and training of service providers	
		Provide specialised services	Shelters Counseling Care and custody of children
		Education and awareness raising Rehabilitation and training of victims Encourage elaboration of media guidelines Ensure research and gathering of statistics Foster international cooperation	

Table 4.2: Belém do Pará: States' Obligations

Although no references to 'multiple' or 'intersectional' discrimination or explicit references to intersectionality are found in the text, article 9 includes factors that increase the vulnerability of women to violence, reflecting one of the core principles of intersectionality:

> With respect to the adoption of the measures, States Parties shall take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Similar consideration shall be given to women subjected to violence while pregnant or who are disabled, of minor age, elderly, socioeconomically disadvantaged, affected by armed conflict or deprived of their freedom.[134]

However, this principle cannot be considered as fully reflecting an intersectional 'approach', since it is not always clear whether these 'intersectional positioning' is taken as a symptom of a structural problem or as an incidental situation. Figure 4.2 illustrates the connection between forms of violence, shown in yellow, policy domains, in blue, recommended measures, in lilac and references to vulnerability, in green. Some of the grounds of vulnerability resemble 'social categories', such as race and ethnic background, and some appear to adopt the 'vulnerable groups' approach, such as the elderly and pregnant women, yet with limited indication of a social constructions or structural perspective.

All in all, there is a 'claim' that certain women are specially vulnerable to violence and consequently a 'demand' to take this into account when adopting the required measures for compliance. However, lack of compliance with article 9 is not directly assessed by the Court since the Convention establishes that only the obligations that require immediate implementation, those included in article 7, can be the object of a contentious claim before the IACtHR. Nevertheless, case law has established that article 9 can *inform* the assessment of State compliance with article 7. The purpose of article 9, thus, seems to be to provide a principle of interpretation, similar to the suggested 'role' of intersectionality discovered in chapter 3.

Regardless of the level of coherence with principles of intersectionality, the Belem do Para Convention conveys a clear notion of what constitutes VAW, adapting it to the social reality of the Americas. In addition, because of the distinction made between 'immediate' and 'progressive' compliance, the duties laid upon States are

[134]Ibid, article 9.

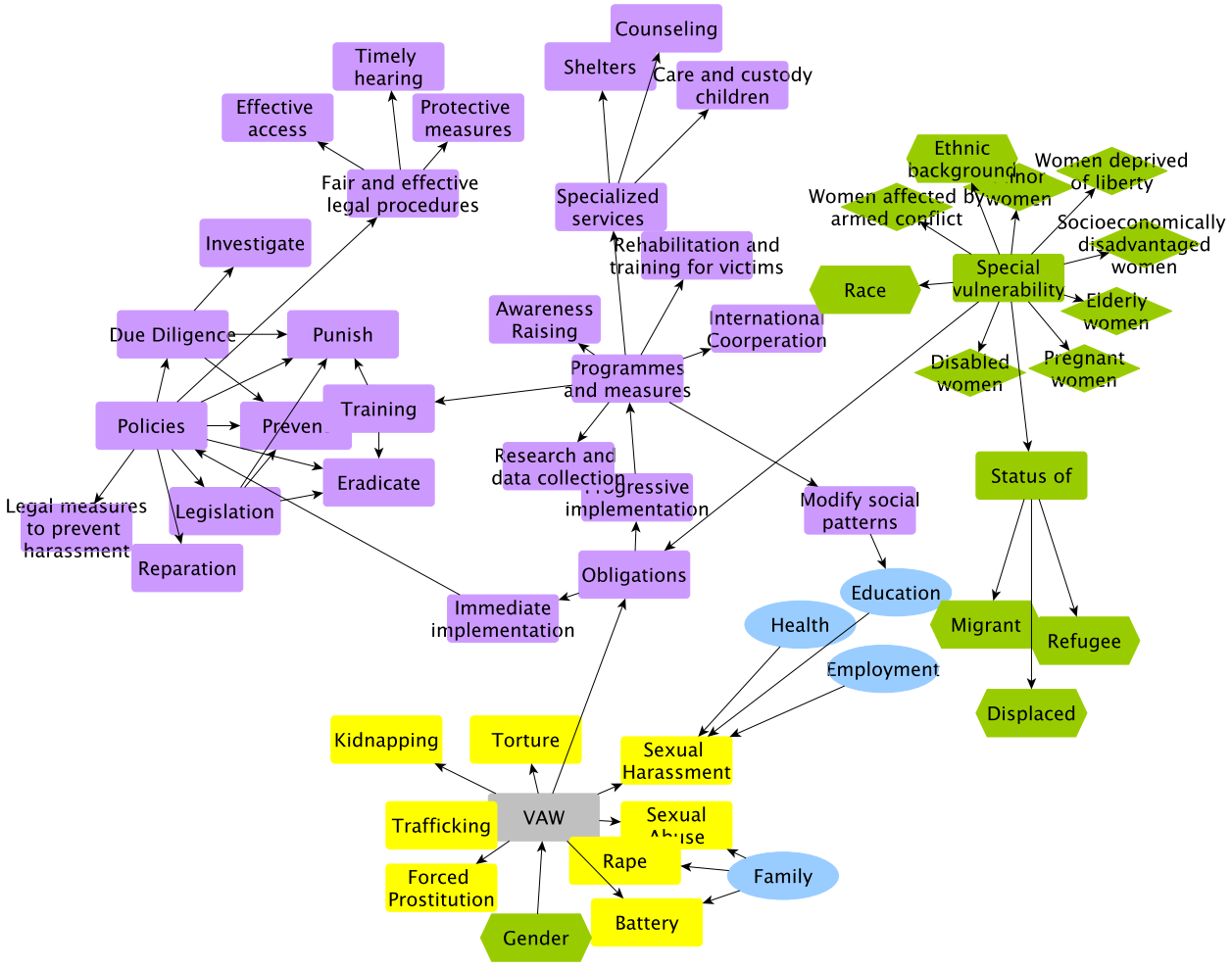


FIGURE 4.2: Belém do Pará: general overview

easily understood. This positive impression given by the wording of the Convention is confirmed by the willingness of States to adopt it. To date, only the United States of America and Canada are not party to the Convention.

4.3.3 Interpretation and Adjudication

The majority of the cases concerning VAW brought to the Inter-American Court of Human Rights are based on forced disappearances, arbitrary detention and inhumane treatment, torture and rape by militia officers, all claims connected to the recent political history of Latin America where, until the mid and late 1990s, internal armed conflicts within and across many countries, military dictatorship and the generalised repression of the civil population were taking place. For this reason it is not possible to replicate the analysis of cases as conducted in relation to

the CEDAW Committee and the CoE, focusing on domestic violence. Therefore, cases of murder and sexual violence will be the object of analysis, where the Court has been able to focus on women in particular. Nevertheless, although cases of domestic violence have not reached the Court so far, two cases have been decided by the IACHR, and are included in this review in order to provide, although limited, a comparison to domestic violence within each analysed system.

However, before entering the analysis of the jurisprudence, some preliminary explanations are needed. In cases of VAW, the general obligations established in the American Convention are complemented and enhanced by the obligations arising for States parties from the Belem do Para Convention. As commented, although in regard to the latter, the Court is only competent to evaluate violations to Article 7, the complete text of the Convention and other instruments guide the Court's interpretation. In addition, in the cases where Belém do Pará was directly applicable, the claim was filed in relation to the American Convention as well.[135]

In addition, in *González et al v. Mexico*, the Court explained that interpretation should follow the principles of 'good faith' and 'the object and purpose' of the instrument. Furthermore, it considered that the 'particular nature' of the rights regulated in the instruments had to be taken into account. Human Rights are, according to the Court, composed by two types of elements: rules and values. Human Rights conventions, thus, should be interpreted according to a 'values-based model', adopting an approach best suited for the protection of the individual even in the absence of a specific 'rule'.[136]

Moreover, throughout the different cases, the Court has affirmed the following notions regarding VAW which guide the interpretation of cases:

- it is a violation of human rights;
- it is an offence against human dignity;
- patriarchy is a constitutive element: it is a manifestation of the historically unequal power relations between women and men;

[135]See: Inter-American Court of Human Rights (IACtHR), *González et al. ('Cotton Field') v. Mexico*, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), *Cantú et al. v. Mexico*, Judgment of August 31, 2010 (Preliminary Objections, Merits, Reparations and Costs) and *Fernández Ortega et al. v. Mexico*, Judgment of August 30, 2010 (Preliminary Objections, Merits, Reparations, and Costs).

[136]González et al. v. Mexico, footnote 135, para. 33.

- it is cross sectional: pervades every sector of society, regardless of class, race, or ethnic group, income, culture, level of education, age or religion, and strikes at its very foundation.

There are some general principles of procedural nature established by the IACtHR that are applicable to cases of violence against women. In particular, the Court has clarified that there is a positive obligation to investigate human rights violations. In this respect, the obligation to investigate, considered an obligation of means rather than results, implies undertaking steps by the State as an inherent legal obligation and not as a mere formality preordained to be ineffective. Also, it has clarified that the judicial investigation of human rights violations cannot be regarded as matter of private interest, putting the procedural initiative upon the victims or their next of kin, nor can it be decided based only on evidence provided by them. On the contrary, once State authorities are aware of an incident, they should initiate ex officio and without delay, a serious, impartial, and effective investigation. This investigation must be carried out using all available legal means with the aim of discovering the truth.[137]

The Court has defined guiding principles that must be observed in criminal investigations into human rights violations, and these may include, inter alia:

- Recovery and preservation of probative material in order to assist any potential criminal investigation of the authors;
- Identification of possible witnesses and obtaining their statements, and determination of the cause, form, place and time of the act investigated.
- The scene of the crime should be examined thoroughly, and rigorous analysis should be performed by competent professionals, using the most appropriate procedures.

In addition to these general requirements, the Court highlights that in cases of VAW, several international instruments describe and illustrate the enhanced State obligation to investigate them with due diligence, in the course of a criminal procedure. The cases analysed below enhance these general requirements in relation to the concrete situations.

[137] *Cantú v. Mexico*, footnote 135, para. 176.

Murder The cases included in this section illustrate the Court's perspective on the systematic murder of women in a context of generalised violence, yet within two different contexts. In one context, it analyses the situation of women within the massacre of entire populations, and on the other, the targeting of women in a context of generalised crime.

In relation to the massacre of women among the general population, two cases have been brought against Guatemala. *'Las Dos Erres' Massacre*[138] and *Río Negro Massacres*[139] v. Guatemala. The first case concerns the massacre of 251 inhabitants of the community of Las Dos Erres, including children, women and men, by a specialised group within the armed forces of Guatemala named *kaibiles*, between December 6 and 8, 1982. In this case, many women had been murdered, raped and beaten to the point of abortions. The statements given by the kaibiles during the criminal proceeding indicated that in the case of women, they massacred women by savagely raping them, sometimes in front of their parents and only afterwards, killing them. Several witnesses recounted similar testimonies and also, residents of the neighbouring village testified of finding evidence of the cruelty displayed by the soldiers, causing abortions to pregnant women.

The Court observed that the domestic investigation was not complete and thorough because it only addressed infringements to life, excluding torture and other alleged acts of violence against the children and female population. It considered that Guatemala had the obligation to investigate *all* of the facts with due diligence, even when the Convention of Belém do Pará had not been adopted at the time of the massacre. The lack of investigation constituted a breach of the State's obligations arising from grave human rights violations, which are jus cogens and generate direct obligations for the States, such as investigating and punishing those practices.

Similarly, in *Río Negro Massacres v. Guatemala*,[140] the Court examined the destruction of the Mayan community of Río Negro by means of a series of massacres perpetrated by the Guatemalan Army and members of the Civil Defence Patrols in 1980 and 1982. Multiple testimonies revealed that during the massacres, acts of rape against the girls and women of that community were alleged. For instance,

[138]Inter-American Court of Human Rights, *'Las Dos Erres' Massacre v. Guatemala*, Judgment of November 24, 2009 (Preliminary Objection, Merits, Reparations, and Costs).
[139]Inter-American Court of Human Rights, *Río Negro Massacres v. Guatemala*, Judgment of September 4, 2012 (Preliminary objection, merits, reparations and costs).
[140]See, *Rio Negro*, footnote 139.

regarding the massacre in the village of Xococ, (pregnant) women and children were among the victims. In the massacre in Cerro Pacoxom, some of the girls and women were separated from the group and raped, including minors. The case file indicates that at least 70 women and children were murdered and that 17 children from the community were appropriated, including several girls. Two months later, another massacre took place in Los Encuentros, where military and patrols again raped several women, set houses in fire and murdered 79 members of the community. Some surviving women gave birth in the mountains and were only able to register their children later, with false dates and places of birth in order to protect them. In these cases, the Court tried to establish whether there was a pattern in the attacks against women, alongside the attacks affecting the general population. The attempt to do so is explained by the Court as an intention to provide a decision coherent with the general framework of human rights applicable in the OAS, even in cases where Belém do Pará is not directly applicable to the cases.

The analysis of the cases focused on the indigenous identity of the victims. The Court had clearly stated that the communities enduring the massacres had been categorised by the militia as 'internal enemies' because of their Mayan identity, making them 'the ethnic group most affected by the human rights violations committed during the armed conflict.'[141] Nevertheless, the Court introduced 'gender' into the analysis in order to capture the situation of women in particular, and consider the particular consequences that targeting women had for the spirit of the community as a whole:

> This practice was intended to destroy a woman's dignity at the cultural, social, family and individual levels. In addition, it should be indicated that, when perpetrated against Mayan communities 'the mass rapes had a symbolic effect, because Mayan women are responsible for the social reproduction of the group [... and] personify the values to be reproduced in the community'.[142]

This inclusion of gender to the analysis of the murders suggests a basic 'intersectional approach', even when the Court did not make references to 'multiple' or 'intersecting' discrimination, nor explicit references to intersectionality. In fact, in relation to vulnerability, it only mentioned children[143] and detention.[144]

[141] *Las Dos Erres*, footnote 138, para. 58.
[142] Ibid, para. 59.
[143] *Rio Negro*, footnote 139, para. 184; Las Dos Erres, footnote 138, para. 120.
[144] *Las Dos Erres*, paras 109 and 116.

In relation to the particular targeting of women, the Court focused on the systematic murder of women in Ciudad Juarez in *González et al. vs. Mexico*.[145] In this case, the Court elaborates on basic notions for the first time, such as the scope of *femicide* or the obligations of states in relation to the acts of private actors.

In this case, the Court embarked on establishing a pattern of gender-based violence, constituting a form of 'structural discrimination', along the high level of violence affecting the general population of Ciudad Juárez. Establishing such distinction was needed in order to find a violation to article 7 of the Belem do Para Convention. In this case, the Court seemed to distinguish between cases which are gendered based and cases where violence affecting women constitute 'ordinary' violence.[146] It referred to 'gender based murders of women (...) committed for reasons of gender' as *femicide*, while other cases that were still not proven to be gendered based were referred to as 'murders of women', even if a general context of VAW seemed fairly proved. The Court explained that VAW should be characterised as gender based when the motive underlying the violence was indicative of gender discrimination or when it affects women disproportionally. Such disproportionality could be proved by the existence of a social context facilitating violence, highlighting a pattern of discrimination, for instance, by the amount of cases, the characteristics of the victims, the methodology of the crimes, and in this case, the ineffective response of the public bodies and discriminatory practices and stereotypes.

In the analysis of the types of victims, in order to confirm the 'gendered pattern' of the violence, an intersectionality approach is perceived. The Court held that most victims were young, working class, employed in the Maquila sector, underprivileged, students or migrants. Each of these categories contributed to the vulnerability of the victims, who, according to the victims' representatives, suffered 'double discrimination', due to their gender and their humble origin.[147] The emphasis, however, lied on gender over other categories.[148] The Court recognised that the victims were indeed 'young, underprivileged women, workers or students', but it concluded that there was discrimination based on gender, without elaborating on the alleged 'second ground' of discrimination. Gender was found to be the common and most important ground of vulnerability, where 'cruel acts of violence

[145] *González et al. vs. Mexico*, footnote 135.
[146] Ibid, para 144.
[147] Ibid, para. 391.
[148] Ibid, para. 138.

are perpetrated against girls and women merely because of their gender.' This conclusion, however, does not necessarily preclude an 'intersectional' view of the victims. On the contrary, it suggests that, having 'weighted' each of the social categories, the Court opted for gender.

The Court emphasised that irregularities in the investigation and proceeding encouraged impunity, facilitated the repetition of acts of violence, and confirmed the generalised patriarchal attitudes and the public servants' strong tendency toward stereotyping. For this reason, the ineffective institutional response and the indifference in the investigation of cases constitutes part of the pattern of structural gendered discrimination. Most crimes remained unsolved and murders with traces of sexual violence presented higher levels of impunity.[149] The irregularities included delays in starting the investigations; slow or absent activity in the case files; negligence and deficiencies in gathering evidence, conducting examinations and identification of victims; loss of information; misplacement of body parts and failure to recognise the crimes as part of a global phenomenon of gender-based violence.[150] Finally, several pieces of evidence pointed at discriminatory attitudes by the authorities. The Commission described it as an 'alarming pattern of response and stereotyped conceptions of the missing women.'[151] This point will be illustrated in the next section.

In addition, the Court has established that the State has an obligation to investigate violations of human rights, ex officio. In this case, it emphasises that when crimes are committed by private individuals, 'if those acts are not duly investigated, they could be considered to be to some extent supported by the public authorities, which would entail the State's international responsibility.'[152] Furthermore, such lack of investigation of negligent behaviour of the authorities reveal the vulnerability and insecurity affecting victims and contribute to similar cases in the future.

Being the first case in which the Belem do Para Convention is fully applicable, the Court elaborated on the obligations of States in relation to violence against women to an unprecedented extent. The Court stressed the need to adopt comprehensive measures, the provision of 'an appropriate legal framework' and 'prevention

[149]Ibid, para. 164.
[150]Ibid, para. 150.
[151]Ibid, para. 151.
[152]Ibid, para. 291.

and protection policies'.[153] In general, the Court stressed that passing legislation is not seen as unique or sufficient element constitutive of State compliance with international obligations, but the existing legal framework must be enforced effectively. In addition, it recommended to adopt a gender perspective in protocols, manuals, judicial investigation criteria, and support services and to comply with the Istanbul Protocol, the United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions and the international standards for searching for disappeared people, especially in crimes concerning disappearance, sexual abuse and murder of women.

The obligation to prevent does not indicate an 'unlimited obligation' to prevent human rights' violations committed by private individuals within its jurisdiction,[154] but it depends on the knowledge of a concrete and immediate risk and on the reasonable possibility to prevent it. Thus, the perpetration of a crime does not immediately giver rise to the international responsibility of the State for lack of prevention, but it results from the combination of the awareness of the risk and the inaction or ineffective action. In the instant case, the State was found responsible since the state knew about the context of violence of Ciudad Juárez by the many reports issued by international and regional organisations, and should have consequently considered that the three disappeared women were under a concrete and immediate risk of sexual violence, physical violence and murder, and take immediate steps.

Sexual abuse and rape I would like to start this segment by explaining a few 'procedural aspects' of rape and sexual abuse which have been clarified by the Court. It has established that rape is a particular type of violence, which is generally characterised by taking place in the absence of persons other than the victim and the aggressor. In view of the nature of this type of violence, one cannot expect graphic or documentary evidence to prove the facts, and consequently, the victim's testimony becomes the fundamental proof of the alleged events.[155] It further explained that the rules regulating the international protection of human rights should not be compared to those regulating domestic criminal justice. The standards of proof are not those of a criminal court, given that it is not the Court's

[153]Ibid, paras. 254 and 256.
[154]Ibid, paras 280 and 282.
[155]Cantú v. Mexico, footnote 135, para. 89; Fernández Ortega et al. v. Mexico, footnote 135, para. 100.

role to determine individual criminal responsibilities. For this reason, the State's defence before an international court of human rights cannot rest on the plaintiff's inability to present evidence, when it is the State who controls the means to clarify the facts within its territory.

In addition, the Court established that the judicial investigation of rape requires that:

- the victim's statement is taken in a safe and comfortable environment, providing privacy and trust;
- the victim's statement should be recorded in order to prevent re-victimisation;
- the victim should be provided with medical, psychological and hygienic treatment, both on an emergency basis and continuously if required;
- the use of a protocol for medical attention aimed at reducing the consequences of the rape;
- a complete and detailed medical and psychological examination made immediately by appropriately trained personnel, of the sex preferred by the victim insofar as this is possible and the victim should be informed that she can be accompanied by a person of confidence if she so wishes;
- investigative measures coordinated and documented and the evidence handled with care, including taking samples and performing tests to identify the perpetrator, and obtaining other evidence such as the victim's clothes, immediate examination of the scene of the incident, and guaranteeing the proper chain of custody of the evidence, and
- the victim should have access to free legal assistance at all stages of the proceedings.

Moving to the substantial aspects of rape, the Court has explained in several cases what sexual violence entails:

> Sexual violence is committed by means of acts of a sexual nature, committed on a person under circumstances against their will, and that in addition to involving physical invasion of the human body, they may include acts which do not involve penetration or even any physical contact.[156]

[156] *Miguel Castro-Castro Prison v. Peru* Judgment of 25 November, 2006. Series C No. 160 (Merits, Reparations and Costs), para. 306; *Cantu v. Mexico*, footnote 135, para. 109; *Fernández Ortega et al. v. Mexico*, footnote 135, para. 119.

The Court has held that rape constitutes a paradigmatic form of violence against women, and its consequences go far beyond affecting the victim. In addition, as commented, the Court has established in several cases that art. 11 of the American Convention on the 'Right to Privacy' covers, among other aspects, a person's sexual life. Rape has been considered by the Court as violating essential aspects and values of the victim's 'private life', representing an intrusion in her sexual life, and annulling the victims' right to decide freely with whom to have intercourse, leading her to lose complete control over such a personal and intimate decision, and over her basic bodily functions. This interpretation of article 11 is a positive development of the original 'letter' of the article, allowing for the protection of women from rape and sexual violence, yet it does seem to bring a whole different approach than originally intended.

In addition, it is reminded that, similar to other international courts, its jurisprudence had established that it is possible to consider rape as an act of torture when the ill-treatment fulfils the following requirements: i) intentional; ii) causes severe physical or mental suffering, and iii) is committed with any objective or purpose. I examine elements two and three below.

Regarding the determination of severe physical and mental suffering, this Tribunal has recognised that rape is an extremely traumatic experience that can have severe consequences and cause significant physical and psychological harm.[157] Rape leaves the victim 'physically and emotionally humiliated,' a situation that is difficult to overcome with the mere passage of time, contrary to other traumatic experiences. This reveals that the severe suffering of the victim is inherent in rape, even when there is no evidence of physical injuries or disease. Indeed, the effects of rape will not always be physical injuries or disease. Women victims of rape also experience complex consequences of a psychological and social nature. Finally, regarding the purpose, the Court has considered that rape has several objectives, including intimidating, degrading, humiliating, punishing, or controlling the person who is raped.

There are some elements which clearly aggravate rape and also make its effects more severe. This is the situation when the person is in the custody of the abuser, or when the victim's characteristic intensifies the suffering. Some of these special

[157] *Miguel Castro Castro Prison v. Peru*, footnote 156, para. 311; *Cantú et al. v. Mexico*, footnote 135, para. 114; *Fernández Ortega et al. v. Mexico*, footnote 135, para. 124 and *Contreras et al. v. El Salvador*, Judgment of August 31, 2011 (Merits, Reparations and Costs), para.100.

circumstances are illustrated below. For instance, echoing *Aydin v. Turkey*, the Inter-American Court clearly indicated that the 'rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent'.[158] In line with this, it considered that the acts of sexual violence to which an inmate was subjected under an alleged finger vaginal 'examination' constituted sexual rape, and that in addition, due to its effects, constituted torture. For this reason, Peru was found responsible for the violation of the right to humane treatment enshrined in Article 5(2) of the American Convention, as well as for the violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (IACPPT).[159]

In *Fernández Ortega et al. v. Mexico*[160], and *Rosendo Cantú y otra vs. México*[161], the Court paid especial consideration to the women's status as indigenous and also, to the language barriers. The claims in both cases related to the rape and torture of indigenous women by military personnel in the State of Guerrero. Mrs. Fernández Ortega is an indigenous woman and a member of the Me'phaa indigenous community; she resides in Barranca Tecoani, a community of the state of Guerrero located in an isolated mountainous area, and consequently, of difficult access. She was married and had, at the time of the events, four children. Mrs. Rosendo Cantu, also indigenous and a member of the Me'phaa indigenous community, was at the time of the events 17 years of age, she was married and lived with her husband and their daughter, approximately at a one-hour walking distance from Barranca Bejuco, also a community located in an isolated mountainous area, with similar difficulties in access.

Several difficulties arose in relation to language. In the statements made by Mrs. Fernández Ortega, some differences can be noted in the narration of the events, particularly with regard to how the rape occurred. This inconsistency was specially highlighted by the State, yet the Court explained that the victim spoke Me'phaa, and to be understood by the authorities she had to be assisted by someone who was not a professional interpreter. Other declarations were made by submitting a written brief and not by oral testimony, indicating that, although she signed those declarations, the documents were drafted by a third person, who also had to reproduce in Spanish what she stated in Me'phaa, involving some form of personal

[158] *Castro Castro Prison v. Peru*, footnote 156, para. 311.
[159] Ibid, para. 312.
[160] *Fernández Ortega et al. v. Mexico*, footnote 135.
[161] *Cantú et al. v. Mexico*, footnote 135.

interpretation, a circumstance that may increase the lack of precision. Thus, besides the traumatic consequences of the rape and the time elapsed between the different statements, it was the lack of appropriate language services what lead to a 'contradiction' in the declarations, something which can easily lead to discard a case and drop prosecution.

The Court considered that both cases of rape entailed a violation of the personal integrity of the victims and constituted an act of torture due to the following facts. The victims were subjected to an act of physical violence and control by soldiers who intentionally sexually penetrated them, fulfilling the requirement of 'intentionality'. Furthermore, in this case, the soldiers were questioning the victim and did not obtain a response to the information they required, which suggests that the rape had the specific purpose of punishing the victim because she failed to provide the required information. Based on this, the Court considered the requirement relating to the 'purpose' of torture as fulfilled.

In relation to the 'intense suffering' constituting torture, the Court observed that international jurisprudence has established that the use of force cannot be considered an essential element to punish non-consensual sexual acts, and that evidence of the existence of physical resistance to such acts cannot be required; rather it is sufficient that there are coercive elements in the conduct. In this case, it is established that the act was committed in a situation of extreme coercion, aggravated by its occurrence in a context of authority relations by the presence of armed soldiers. The vulnerability of the women and the coercion exerted by the agents of the State was enhanced by the presence of additional armed soldiers in the surroundings, exacerbating the context of violence against the victims.

The Court found that the suffering endured by both victims, by being obliged to undergo sexual acts against her will while other military men observed, was extremely intense. The psychological and moral suffering was aggravated because none of the victims could ignore the likelihood that the State agents who witnessed the rape might possibly rape them as well. In addition, in the case of Mrs. Fernández, the Court considered that the presence of her children at the moment prior to the facts, as well as the uncertainty of whether they remained in danger or had escaped, intensified the suffering of the victim. In making the assessment, the Court also took into account expert's views explaining how according to the indigenous worldview, the suffering was experienced as a 'loss of the spirit.' Mrs.

Rosendo Cantú's condition as a child was also considered by the Court as increasing her suffering. Her age was a factor contributing to the traumatic experience, and consequently, confirming the view of rape as torture in this case.

The Commission analysed the consequences of the rape for Mrs. Fernández Ortega taking into account different aspects of her personal situation and the difficulties she had to face, including cultural, economic and social and language barriers, only to find 'resistance, silence, negligence, harassment, fear and revictimisation'.[162] The Commission further considered that the lack of investigation resulted in impunity, which in turn stressed the discrimination, subordination and racism against the victim even further. These consequences resulted from her 'compounded' condition as an indigenous women and her lack of knowledge of the language.[163] Although the Court did not elaborate on this 'compounded nature' of Mrs. Fernández suffering, it did address 'language' and 'indigenousness' as clearly connected.

It is thus in relation to the analysis of the elements constituting the violence, in this cases, the 'intense suffering' leading to a situation of torture, that the Court adopts an 'intersectional' approach, focusing in the interconnection between gender, age and indigenousness. In addition, this intersection is also considered in relation to the access to justice and services by the victims.

Furthermore, the procedural principles applicable to cases of rape were not followed in either of these cases. Victims had to declare in a public place, where there was the possibility to be overheard by people. There were no female doctors or nurses readily available for attention. Neither is there any record that the authorities in charge of the investigation had collected or adopted arrangements to collect the pieces of evidence, such as the clothes of the victim. Instead, they focused their efforts on repeatedly summoning the victim to make new statements. The Court emphasised that, in cases of rape, insofar as possible, the investigation must try to avoid re-victimisation or the re-experiencing of the profoundly traumatic experience each time the victim recalls or testifies about what happened. Finally, the public servants who intervened initially in the case showed a complete absence of motivation, sensitivity, and capacity.

[162] *Fernández Ortega et al. v. Mexico*, footnote 135, para 133.
[163] Ibidem.

Yet, one crucial flaw related to the fact that the victims were not provided by the State with a translator when they required medical care or when they filed the initial complaint; neither did they receive information regarding the subsequent steps taken regarding the complaint in their language. Miss Cantú, in order to inform the authorities of that which affected her and to obtain information, had to turn to her husband who spoke Spanish. In the Court's opinion this was inadequate for respecting her cultural diversity; but it also compromised the quality of the statement and violated the confidentiality of the complaint. The Court considered this as an indication that there was no consideration to the victims' vulnerability based on their language and ethnicity, which constituted an unjustified infringement to her right to seek justice.

In addition, the Court also emphasised the combination of 'indigenousness' and '(young) age' as increasing the vulnerability, placing Mrs. Cantú in a 'vulnerable group'. It established that the State must offer special attention to the needs and the rights of the child, considering the child's particular condition of vulnerability, and should have adopted special measures in favour of Mrs. Rosendo Cantú, during the filing of the criminal complaint and during the judicial investigation of the crime, all the more since she was also indigenous, given that indigenous children whose communities are affected by poverty find themselves in a particular situation of vulnerability. Thus, this combined analysis yields specific obligations for the State. The Court held that from the moment the State had knowledge of the existence of a rape committed against an individual who is a member of a particularly vulnerable group (indigenous and girl child), it had the obligation to carry out a serious and effective investigation and to determine individual responsibility.

Age as an additional factor to the level of trauma suffered from the rape is also mentioned in *Contreras et al. v. El Salvador*.[164] Miss Contreras, a girl a the time of events, was subject to sexual abuse and rape. The representatives argued that the rape should be categorised as torture. For its part, the Commission added that besides constituting torture, they had affected her privacy, violating articles 5.1 and 5.2 and article 11 of the American Convention. The Court found that the victim was subjected to various forms of physical, mental and sexual abuse, including physical ill-treatment, exploitation, humiliation, and threats. The perpetrator also raped her at knifepoint in circumstances that put her 'in a situation of absolute

[164] *Contreras et al. v. El Salvador*, footnote 157.

defencelessness and helplessness'. She was subject to the custody, authority and complete control of her captor.[165]

In *Río Negro Massacres v. Guatemala* indigenousness and age is again emphasised as factors intensifying the suffering of the girls. One girl, María Eustaquia Uscap Ivoy, a minor, was raped by two soldiers and two patrollers. After this, she was taken to the village of Xococ, where she was again raped by a patroller in the market there. She was, like other children in this case, appropriated by other families. The Court granted her an additional monetary compensation, because she was a victim of rape and also of acts of slavery and involuntary servitude.

The approach toward rape and sexual violence based on the analysis of the cases before the IACtHR is outlined in Figure 4.3. In this figure, the forms of violence appear in yellow, connected to grounds of vulnerability in green, and the required measures in lilac.

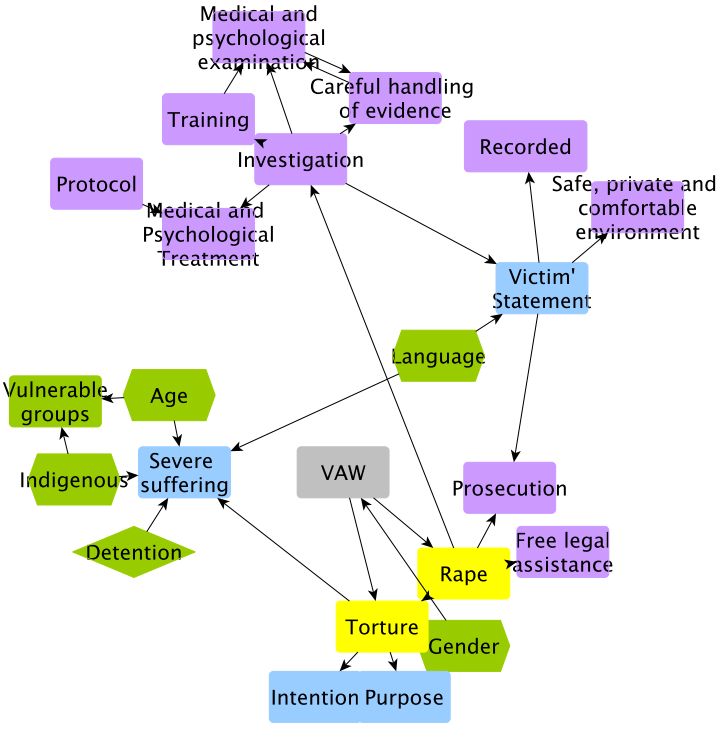


FIGURE 4.3: Inter-American Court of Human Rights: sexual violence and rape

Domestic Violence Two cases of domestic violence have been addressed by the Inter-American Commission, one in connection to Belem do Para Convention, and one in connection to the American Declaration of the Rights and Duties

[165] Ibid, para. 100.

of Man (American Declaration).[166] In these cases, the Commission has recalled definitions used by the ECtHR and the Inter-American Court, yet having only two cases, it is yet to provide its own definition on several aspects, for instance, on what constitutes domestic violence.

In 2001, the Commission decided on the merits of the case concerning *Maria da Penha v. Brazil*.[167] In this case, the applicant was the victim of attempted murder by her husband, who shot her and attempted to electrocute her. It took 15 years until there was a final ruling against the abuser, since the defence had appealed the trial decision that sentenced him to 15 years of prison, and later on, appealed the indictment. Both appeals were admitted by the Courts, even when they were were time-barred according to the domestic rules of procedure. As a consequence, the abuser was free during the entire period, even after having been found guilty in a criminal procedure.

There are no explicit references to 'intersectionality' in the decision, nor are there references to 'multiple' or 'intersectional' discrimination, to any social categories as having a bearing in the case or to special vulnerabilities of any kind. In fact, the attention of the representatives and the Commission was directed to establishing that Mrs. da Penha was not an isolated case, but a pattern of impunity exists in relation to cases of domestic violence in Brazil. One of the elements revealing such pattern was the few cases that lead to criminal prosecution in comparison to the complaints filed, and the even fewer convictions.

The Commission explained that the Belem do Para Convention requires States to 'exercise due diligence' to prevent human rights violations. The Commission explains the 'meaning' of due diligence:

> When committed by state agents, the use of violence against the physical and/or mental integrity of an individual gives rise to the direct responsibility of the State. Additionally, the State has an obligation [...] to exercise due diligence to prevent human rights violations. This means that, even where conduct may not initially be directly imputable to a state (for example, because the actor is unidentified or not a state agent), a violative act may lead to state responsibility 'not because of

[166] Inter-American Commission on Human Rights (IACHR), American Declaration of the Rights and Duties of Man, 2 May 1948, available at: `http://www.refworld.org/docid/3ae6b3710.html` [last accessed 8 December].

[167] *Maria da Penha v. Brazil*, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000).

> the act itself, but because of the lack of due diligence to prevent the violation or respond to it as the Convention requires.'[168]

Thus, in this first interpretation of due diligence by the Commission, it connects it to the imputability of the State, and explains that even in the absence of direct imputability ('actor is not a state agent'), the State may be 'responsible' because it failed to comply with the 'obligations' stipulated in the Convention with due diligence. This understanding is completely in line with the discussion in chapter 1, section 1.6, and places due diligence in the area of responsibility, providing discretion for the assessment of whether the State has met the requirements of the norm. Consequently, the Commission established the 'content of the norms' in relation to the concrete case.

In assessing the right to fair trial (article 8 American Convention), the Commission explained that a 'reasonable time' is to be assessed based on the complexity of the case, the procedural activity of the parties and the conduct of judicial authorities, in line with the case law of the ECtHR. Based on those elements, the Commission determined that the domestic judicial decisions revealed 'inefficiency, negligence, and failure to act on the part of the Brazilian judicial authorities and unjustified delay in the prosecution'.[169]

Regarding the right to equality before the law, the Commission noted the high numbers of 'attacks on women' and the disproportionate number of women victims of murder at the hands of their partners. The Commission emphasised that, although several positive measures had been adopted by Brazil in the legislative, judicial and administrative spheres, such as specialised police units and shelters or abolishing the 'honour defence' in cases of 'wife-killing', there were still discriminatory practices against women.

In relation to the duties of States under the Belém do Pará (article 7), the Commission found that the failure to prosecute and convict the perpetrator indicated that the State condoned the violence and exacerbated its consequences.[170] In addition, the State failed to prevent the violence, given the pattern of impunity and judicial inefficiency.[171] Furthermore, the Commission considered that such failure

[168]Ibid, para 20.
[169]Ibid, para. 44.
[170]Ibid, para 55.
[171]Ibid, para 56.

showed the lack of commitment to take appropriate action to address domestic violence.

In the second case, *Jessica Lenahan v. USA*,[172] the Commission was confronted with a situation of domestic violence against Mrs. Lenahan and her daughters, resulting in the murder of the girls, even when a permanent restraining order had been issued against the abuser and Mrs. Lenahan called the police in multiple occasions to report the absence of the girls and the reckless behaviour of her ex-husband.

The Commission elaborated on two specific notions: due diligence and the special risk affecting some women. In the delineation of due diligence, an important aspect to be noticed is that the US has not ratified Belém do Pará or the American Convention, hence the claim was filed in relation to the American Declaration.[173] Consequently, the State challenged the applicant's claims based on three concrete points:

- The American Declaration is a non-binding instrument and its provisions are aspirational;
- The American Declaration is devoid of any provision that imposes an affirmative duty on States to take action to prevent the commission of crimes by private actors;
- Although the due diligence principle has found expression in several international instruments related to VAW, its content is still unclear.[174]

The elaboration of the Commission on these three issues brings some questionable answers. For instance, the Commission recalls that the principle of non-discrimination, the right to equality, the connection between gender-based violence and discrimination, the 'link between gender-based violence, discrimination and due diligence' have been elaborated upon by the Inter-American and other regional human rights systems, and then it states:

> The importance of the right to life is reflected in its incorporation into every key international human rights instrument. The right to life is one of the core rights protected by the American Declaration which has undoubtedly attained the status of customary international law.[175]

[172] *Jessica Lenahan (Gonzales) et al. United States*, Report No. 80/11, Case 12.626, Merits, July 21, 2011.
[173] American Declaration, footnote 166.
[174] *Jessica Lenahan (Gonzales) et al. United States*, footnote 172, para. 106.
[175] Ibid, 112.

The Commission seems to suggest that the American Declaration constitutes customary law. This approach toward determining the binding character of the norms embodied in the Declaration resembles the earlier feminist critics to international law, where the focus was to provide evidence of the customary nature of some norms. In chapter 1, I have proposed an alternative approach, in my view, much more in line with current developments in international law making: soft-law documents, such as the American Declaration, remain 'law', and binding on States. The position of the Commission regarding the biding character of the Declaration, however, is unclear.

Regarding the second issue, the Commission concluded that States are 'obligated' under the American Declaration to give legal affect to the obligations contained in art. II, including the prevention and eradication of VAW as part of the duty to eliminate discrimination. As a consequence, the failure to 'protect' women from violence by private actors would constitute a breach of the American Declaration.[176]

The third issue, regarding the principle of due diligence, brings perhaps the most controversial contribution by this decision. The State complained about the 'lack of content' of due diligence, assimilating it to a 'standard'. The Commission first replies that the due diligence 'principle' is 'used to interpret the content of States obligation toward VAW', fully in line with the position taken by other bodies, such as CEDAW, as discussed in chapter 3, and my own position, explained in chapter 1. However, it then appears to endorse the 'standard' approach, calling it a 'benchmark' and even enumerating its 'components' based on jurisprudence by the IACtHR and the ECtHR.[177] This approach to due diligence seemed welcome by advocacy groups, and even some academics, emphasising the need to elaborate on 'the content' of due diligence.[178] The need for establishing such content seems to stem from the lack of ratification of the US of other human rights documents, such as CEDAW or Belém do Pará that establish the obligations of States and the duty to exercise due diligence.

Furthermore, the Commissions considers the 'standard' as formed by four principles:

[176] *Jessica Lenahan (Gonzales) et al. United States*, footnote 172, para 120.
[177] Ibid, paras 128 - 136.
[178] See for instance, the 'Due Diligence Project', `http://www.duediligenceproject.org/` [last accessed on 8 December 2014].

1. A State may incur international responsibility for failing to act with due diligence to prevent, investigate, sanction and offer reparations for acts of violence against women; including for actions committed by private actors in certain circumstances,[179]

2. There is a link between discrimination, VAW and due diligence, and the States duty to address VAW also involves positive measures to prevent and respond to the discrimination that perpetuates this problem,[180]

3. There is link between the duty to act with due diligence and the obligation of States to guarantee access to adequate and effective judicial remedies,[181]

4. Certain groups of women are at particular risk for acts of violence due to having been subjected to discrimination based on more than one factor, among these girl-children, and women pertaining to ethnic, racial, and minority groups; a factor which must be considered by States in the adoption of measures to prevent all forms of violence.[182]

In this enumeration, thus, the Commission recalls the connection between the imputability of the State and acts of private agents, similar to most bodies, yet in the effort to 'provide content' to the 'standard', the second principle places due diligence in the realm of 'discrimination' and the 'obligation to prevent' to justify the need for positive obligations. This is a curious decision, given that it has been firmly established that the State has 'positive obligations' regarding human rights, removing it from the 'discretion' area of due diligence.[183] The third principle seems in line with case law and to some extent supported by the analysis in these chapters. The final principle, however, is indeed controversial. The Commission is the first body to place the 'special vulnerability' due to 'multiple discrimination' as a constitutive element of due diligence, calling for 'special protection':

> The Commission has also recognised that certain groups of women face discrimination on the basis of more than one factor during their lifetime, based on their young age, race and ethnic origin, among others, which increases their exposure to acts of violence. Protection measures are considered particularly critical in the case of girl-children, for example, since they may be at a greater risk of human rights violations based on two factors, their sex and age. This principle of special protection is contained in Article VII of the American Declaration.[184]

[179] *Jessica Lenahan*, footnote 172, para 126.
[180] Ibidem.
[181] Ibid, para 127.
[182] Ibidem.
[183] See: chapter 1, subsection 1.4.2 on the scope of the human rights obligations on VAW.
[184] *Jessica Lenahan*, footnote 172, para 115.

Thus, the greater vulnerability toward violence in connection to multiple grounds is explicitly recognised, and connected to the obligation to provide 'special protection', for instance, by adopting protection orders, falling under the 'standard' of due diligence. The intersectional approach thus, is visible through these implicit references, and is to some extent used in the analysis of the case, although the Native-American and Latin-American descent of Jessica Lenahan is only mentioned in connection to statistics showing that Native-American women and those pertaining to low income groups are at a greater risk to domestic violence.[185] The final outcome of the decision, that is, the concrete recommendations, however, includes only one that may point to intersectionality: to offer reparations considering 'their perspectives and needs'.[186]

4.3.4 Final observations on the Inter-American system

In this section, two main normative documents have been discussed: the American Convention on Human Rights, and the Belem do Para Convention. The findings in relation to the intersectional lens regarding those documents are illustrated in Figure 4.4.

The American Convention, similar to the ECHR, takes a 'non-discrimination' approach, facilitating an intersectionality approach only in connection to a view on 'indirect discrimination'. The Convention includes another provision with reference to 'danger' due to social categories of difference, yet 'vulnerability' is not explicitly mentioned. No other references to intersectionality are found.

Although no references to multiple or intersectional discrimination are found, the Belem do Para Convention introduces the notion of special vulnerability of certain groups of women toward violence. Nevertheless, some of these grounds of vulnerability appear to be addressed from a 'social-structural' perspective, while others seem to be addressed as 'natural' or merely given categories. For this reason, it is not possible to consider that the text of the Convention truly reflects an intersectionality approach.

The approach of the documents is better understood in relation to the case law of the Inter-American Court. In the analysis of the Massacres, the Court analysed

[185]Ibid, para 91.
[186]Ibid, para. 201, 3.

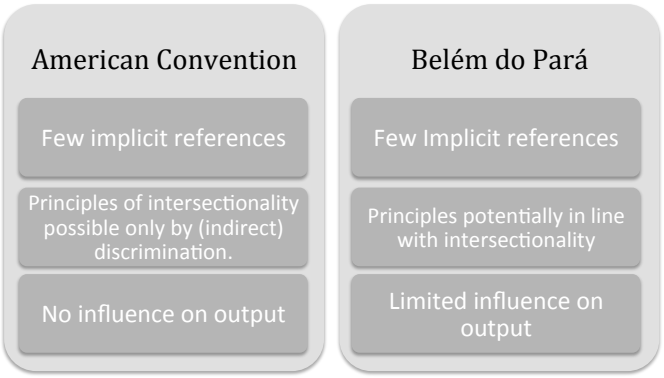


FIGURE 4.4: Inter-American Instruments: resemblance of intersectionality

the cases from the intersection of indigenousness and gender. It shows an approach potentially coherent with intersectionality, yet with no implicit mention to 'multiple' or 'intersecting' discrimination, or explicit references to it. In *González et al. v. Mexico*, however, even when there was reference to specific social categories of difference contributing to the vulnerability of the girls toward violence, the analysis of the Court focused on 'gender', and did not address the 'multiple discrimination' of the victims. Yet it is in the cases of rape where the influence of intersecting grounds, in these cases gender, indigenousness, language and rurality, is really analysed in relation to specific experiences of violence, constituting torture, and reflected in the recommendations of the Court. The Court makes reference to 'vulnerable groups', and the 'compounded' nature of the victims' vulnerability. Based on these cases, and taken as a whole, thus, the Court seems to recognise the intersection of gender and other categories in relation to indigenous women more directly than with other women.

The cases of domestic violence before the Inter-American Commission show a different approach than the Court. In *Maria da Penha*, there are no references to vulnerability, multiple discrimination or intersectionality. Yet in the case of *Jessica Lenahan*, the Commission makes reference to 'groups of women who are at special risk' and discrimination 'on more than one ground'. Furthermore, it connected this notion directly to the principle of due diligence, and as such, calling states to bear this in mind in relation to the 'prevention' of violence. Nevertheless, the 'more than one ground' did not really inform the analysis of the case or the final recommendations to the State, remaining more as rhetoric than real practice. The position of the Commission thus, is more confusing than that of the Court.

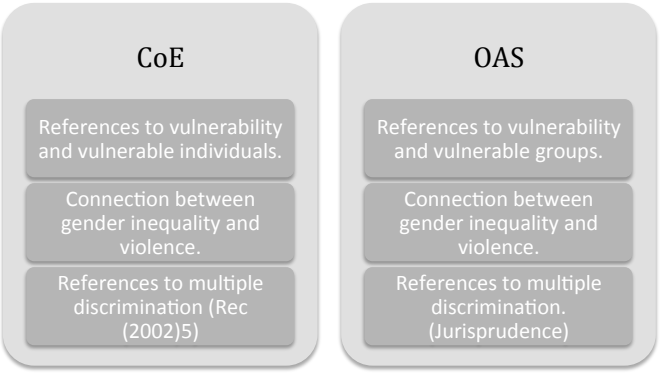
4.4 Chapter Conclusion

This chapter, like the previous one, was dedicated to examining the first research question of this thesis, yet in relation to regional human rights systems:

> How is intersectionality currently positioned within the international human rights framework to violence against women?

This question is answered differently in relation to each of the two systems under review. In general terms, the analysis of normative documents and case law in both system, the CoE and the OAS does not suggest to have adopted an intersectional approach to VAW. There are no explicit references to intersectionality, and only few implicit references can be found in the texts and the cases. The main type of implicit references found in each system are described in Figure 4.5. Nevertheless, references to 'vulnerability' are often used inconsistently, even within a same document or even body. Moreover, references to 'multiple discrimination' appear as rhetoric rather than a real theoretical view on the violence.

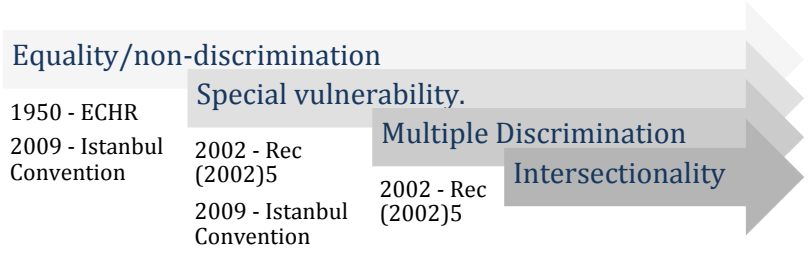
FIGURE 4.5: Implicit references to intersectionality: comparison



Although it is possible to perceive a certain process toward addressing difference, both systems seem still to be under the spell of the equality paradigm. This is particularly the case for the CoE, where the indirect discrimination approach seems to prevail, with the recent incorporation of some categories of vulnerability, yet still not in relation to VAW. In connection to references to 'special vulnerability', recommendations regarding the provision of 'protection' are normally made, yet no clear distinction is perceived in comparison to recommendations of protection made in situations not relating to 'specially vulnerable' women. In a few situations, special vulnerability leads to the recommendation of prevention measures, such

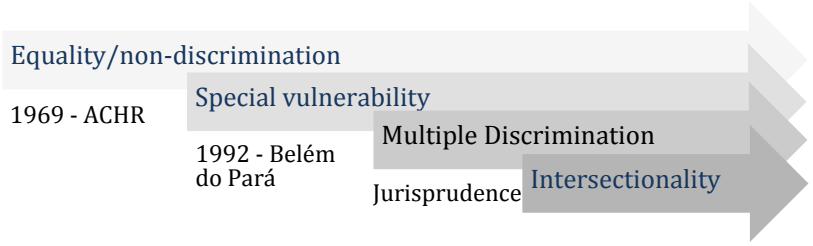
as in the case of Female Genital Mutilation (FGM), or other forms of violence affecting specific groups of the population. 'Multiple discrimination' has been mentioned, yet the scope is very narrow and has not reflected in case law yet. The approach, as illustrated in Figure 4.6, is not a linear process as it is as UN level, with documents more inclined to follow traditional approaches and no reference to intersectionality.

FIGURE 4.6: Approach to social categories of difference: CoE



As illustrated in Figure 4.7, in the case of the Inter-American System, references to vulnerability were introduced in 1992, by means of the Belém do Pará Convention. Since then, 'multiple' discrimination and 'compounded' vulnerability has emerged in jurisprudence. However, in *Jessica Lenahan*, 'vulnerability' has been set aside for 'risks'. Such a turn seems to somewhat part from our theoretical understanding of intersectionality, thus, even when such attention to women who are at 'particular risk' because of multiple discrimination is placed in connection to 'due diligence' and States must prevent them from suffering violence. For this reason, the process that seemed to be heading towards an intersectional approach to VAW may be re-directed toward a 'risk assessment' rather than a transformative effect.

FIGURE 4.7: Approach to social categories of difference: OAS



The second question in the thesis, *What are the derived duties of States?*, also seems to depend on the approach of each of the systems.

Focusing on the CoE, the implications of highlighting 'special vulnerabilities' for Member States are different whether these are included in (Rec (2002)5) and

the Istanbul Convention, or they appear in jurisprudence. In the case of the documents, they bring very concrete, and also limited, consequences. An analysis of the implementation of the Istanbul Convention by the State parties and the assessment of the 'monitoring body' should provide a more concrete answer. This task, however, would appear as premature at this stage, since the Convention has only recently entered into force. In relation to the view of the Court on vulnerability, from the review of cases on domestic violence in this chapter, it is possible to see that the Court makes certain use of the notion in order to determine violations to the prohibition of discrimination in article 14, relying on studies conducted by other bodies, such as NGOs or the UN Special Rapporteur. The recommendations made are connected to the individual claim, and the flaws found in connection to the particular cases and the findings of the reports.

Regarding the Inter-American normative documents and the work of the Court, excluding the decision of the Commission on *Lenahan*, the approach seems relatively stable. The 'special vulnerability' lens has contributed to identify State flaws in implementation, and the Court suggests appropriate measures to address these shortcomings. It is in the concrete cases thus, when the consequences of addressing VAW from the perspective of additional vulnerability can be identified. In doing so, the Court also relies on the research conducted by NGOs, special rapporteurs and truth commissions.

Part III

Empirical application of the Intersectional approach to VAW

Chapter 5

Introduction to the empirical studies

> Science, my boy, is made up of mistakes, but they are mistakes which it is useful to make, because they lead little by little to the truth.
>
> Jules Verne, Journey to the Center of the Earth

5.1 Introduction

The case studies discussed in chapters 6 and 7 are dedicated to explore if the application of an intersectional approach to Violence Against Women (VAW) can contribute to reveal gaps in legislation and policies, and in doing so, answer the third sub-question of this study. According to the analysis of the human rights documents on VAW carried out in Chapters 3 and 4, the adoption of an intersectional approach to VAW might be slowly becoming a recommendation to State parties. The advantages and disadvantages of such recommendation call for a clarification of what an intersectional approach could contribute to the human rights project on VAW. The application of an intersectional approach in concrete case studies, will identify advantages and limitations based on empirical findings.

The aim of this chapter is to clarify the goal of the empirical case studies, their connection to the thesis research questions and to describe the general research design used. The sections below provide the justification for selecting the case studies analysed in chapters 6 and 7, outline the research questions and I explain the research design from a theoretical and methodological perspective.

5.2 Rationale for selecting the case studies

The normative analysis in this thesis has addressed human rights documents from two different levels, the United Nations (UN) and two regional systems. The empirical analysis provides an opportunity to reflect about the practical influence of norms from different level, international and regional, and for that reason, countries both party to CEDAW and to the regional human rights systems were selected. Hence, since this thesis has focused on the Council of Europe (CoE) and the Inter-American System, two member states from each system are chosen.

Regarding the scope of the case studies, their focus is one specific type of violence against women. Consequently, the cases address Intimate Partner Violence (IPV), that is, any act of physical, sexual, psychological or economic violence between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim, since this is the one form of violence that has been analysed at UN and regional level in previous chapters and that it has been widely regulated by dedicated domestic laws. Nevertheless, IPV may be addressed in domestic laws under a different term and indicate different contexts to the violence, such as 'domestic violence', 'family violence' or any other designation. Regardless of such differences, the focus of the study remains on the violence taking place between partners or ex-partners, without including violence that is directed exclusively to the children or when the perpetrator is someone other than the partner.

In the empirical case studies, the analysis focuses on the States' legislation and policies on violence against women. Chapters 3 and 4 point out some basic human rights requirements regarding VAW that must be covered as a minimum: a dedicated law and policies on VAW that prohibit the violence, offer possibilities for criminalisation, provision of services and reparation. Domestic implementation of those requirements indicates a basic level of willingness of States to comply with

human rights documents on VAW. Selecting cases where the legislation and policies are at least in theory in line with those basic requirements makes it possible to focus on the potential of the intersectional approach for discovering hidden gaps in the already existing policies.

Two main types of intersectionality appear in research: group-centred and dynamics-centred, as described in chapter 2. These different strands within intersectionality seem to share a number of commonalities and differences as well. Two cases studies, following each of these two main approaches, were conducted, making it possible to discover the differences and similarities among the two. In addition, the two different approaches to intersectionality seemed in line to the references to intersectionality found in each regional system described in the chapter 4: the CoE appears to favour the 'vulnerability' construction, suggesting a group-centred approach, while the Inter-American system seems to pay attention to vulnerable groups and factors, recalling the dynamic-centred approach. Consequently, the first case study adopts the group-centred approach in relation to one CoE member State, while the second case study, following the lead of dynamic-centred authors, is applied in a member State to the Inter-American System.

In the next section, the research approach is described, explaining the common research design for the two cases.

5.3 Research Questions and Approach

As discussed in Chapter 2, although initial differences between the group-centred and the dynamic-centred approach may have been more substantial, today both approaches share a number of similarities. Regarding theoretical underpinnings, both the group-centred and the dynamics-centred approach emphasise the relations between social categories of distinction. The main difference between both approaches seems to be the focus of study. While the group-centred approach to intersectionality pays great attention to marginal groups located at the intersection of two or more axis of inequality, authors adopting a dynamic centred approach to intersectionality focus on more than one group to explore the relations between categories and their process of elaboration. Two cases studies, following each of these two main approaches, were conducted. Therefore, the first case study focuses on a pre-determined group of women located at the intersection of two or

more core social categories of difference, previously selected. The second empirical study does not focus on a pre-determined group, but rather on an 'intersectional setting': a geographical area where, in addition to the core pre-selected social categories of analysis used in the first case study, 'additional' social categories of distinction and/or factors were expected to emerge as relevant.

Both empirical case studies in this thesis share the same core social categories of difference of gender, race and class, described in chapter 2, subsection 2.6.2. In line with Warner, the 'categorisation strategy' used in the cases is inspired by interdisciplinary sources and aims to determine relevant social categories for the particular research.[1] Accordingly, the content of gender, race and class is further delineated in chapters 6 and 7 in relation to the particular cases under review.

In relation to the research questions steering the case studies, it should first be pointed out that the aim of the empirical analysis in this thesis aims at answering the third research question:

> Can the application of an intersectional approach to VAW contribute to reveal gaps in legislation and policies, and if so, how?

Those two main elements, intersectional approach on one hand, and gaps in legislation and policies on the other, are explored in the cases. The implications of the application of the intersectional approach needs to be addressed in two stages, firstly, exploring the social construction of the categories in the concrete case, and secondly, establishing the connection between the social categories and the form of violence under study. The second element, the gaps in legislation and policies, will be addressed in two steps as well, firstly by analysing the applicable laws and policies, and secondly, examining their functioning in practice with the help of the intersectional approach. Consequently, the research questions of the studies will be the following:

1. What are the laws and policies applicable to VAW in (each case study) and what do they entail?

2. How are gender, class and race constructed (according to the participants in each case study)?

[1] L. R. Warner 'A best practice guide to intersectional approaches in psychological research', (2008) *Sex Roles*, 59: 454-463.

3. How are gender, class and race connected to IPV (according to the participants in each case study)?

4. To what extent do domestic laws and policies take into consideration the intersections between gender, class and race and IPV?

By addressing these questions it is possible to answer to the third sub-question quoted above, and address the main goal of this thesis, namely identifying potential benefits and limitations of incorporating intersectionality into the human rights framework on violence against women.

Regarding the approach used in the case studies, it should be clarified that although there is a tendency toward qualitative methods among group-centred authors and a quantitative approach is more commonly used in dynamic-centred studies, today there is preference for using mixed methods in order to overcome the limitations of using only qualitative or only quantitative methods. Nevertheless, Trahan argues that since intersectional approaches do not treat social categories of difference as simple demographic categories but their meaning and effects result from social practices in specific settings, capturing these fluid mechanisms of identity construction and disadvantage require rich descriptive accounts of the contextual nature of peoples lived experiences.[2] Qualitative methods constitute a sensible choice then, because they allow to focus on the participant's perceptions and experiences.[3] The emphasis on perceptions and experiences is also key to feminist standpoint epistemological perspectives:

> Only by making women's concrete, life experiences the primary source of our investigations can we succeed in constructing knowledge that accurately reflects and represents women.[4]

Similarly, Humphreys et al. suggest that using qualitative research allows to see the resourcefulness and strengths of battered women and their communities under extraordinary circumstances by switching from the 'outsiders' view to the 'insiders'.[5]

[2] A. Trahan, 'Qualitative research and intersectionality', (2011) *Critical Criminology*, 19:114, 3.

[3] Fraenkel and Wallen, 1990; Locke et al, 1987; Merrian, 1988, cited by Creswell (SAGE, 2003), 199.

[4] A. Brooks, 'Feminist Standpoint Epistemology' in *Feminist Research Practice*, S. N. Hesse-Biber and P. L. Leavy, (eds) (SAGE, 2007), 56.

[5] J. Humphreys, P. Sharps, J. Campbell, 'What we know and what we still need to learn', (2005) *Journal of Interpersonal Violence* 20(2), 182-187.

In addition, qualitative methods possess an inherent flexibility to react to possible emerging issues, and the possibility to conduct the research in an unfolding manner, allowing to re-orient the research in different directions along the process. For this reason, Shields suggest that qualitative methods of research can better describe the forms and processes of relations among categories of phenomena since the researcher is open to emergent phenomena, while they are useful for providing a close-up view of how social practices operate to create and sustain inequality between intersectional categories.

The limitations of using only qualitative methods relate to the possibilities to generalise the findings of the study. Since the purpose of these two studies is to discover if there are concrete gaps in legislation and policies on VAW in relation to certain women by means of applying an intersectional approach rather than making predictions about what type of violence prevails in certain groups or what are the preferred mechanisms, using only qualitative methods seems acceptable.

Finally, case studies seem an appropriate methodology to follow, since they focus on a unified intersectional core (a single social group, event, or concept) and work their way outward to analytically unravel one by one the influences of gender, race, class, and so on. They allow to explore a specific group at the intersection of multiple categories of discrimination and to uncover the different experience these groups (or the individuals within the group) may have. Narratives form the core of the research, used to 'zoom in' on particular dimensions of the issue and the influence of specific factors.[6]

For these reasons, qualitative methods were used in both cases. More specifically, a qualitative case study methodology with multiple data collection and analysis methods was used, shaped by context and emergent data.[7] Research and studies based on quantitative data were used to determine the contextual boundaries of the cases, also providing a more insightful interpretation of qualitative data. The research design used in the cases is explained below.

[6]McCall, 'The complexity of intersectionality', (2007) *Journal of Women in Culture and Society*, 1771-1800.

[7]N. Hyett, A. Kenny, and V. Dickson-Swift. 'Methodology or method? a critical review of qualitative case study reports' (2014) *International Journal of Qualitative Studies on Health and Well-being* 9.

5.4 Research Design

5.4.1 Data Collection

Three main data collection methods were used in the studies: desk research, semistructured interviews and participant observation, illustrated in Figure 5.1.

Desk research was used for delineating the social context in each case study, necessary to understand the setting or context in which the case is revealed.[8] Situating the research within the social context, making reference to the social background is needed in order to make sense of data.[9] These contextual boundaries entail the analysis of studies and reports in order to establish the general social situation of the women under review.

In addition, desk research was also used for the delineation of the domestic legal and policy frameworks applicable to IPV. Legislation and policies on VAW were identified by references made in national reports and specialised search engines, and definitions of violence, measures (available remedies and provision of services) and references to specific social categories and to intersectionality were examined. Domestic legal and policy framework and studies and reports on the social configuration of the case study present important information required to understand the case as a comprehensive system and also, are crucial in order to answer the third research question.

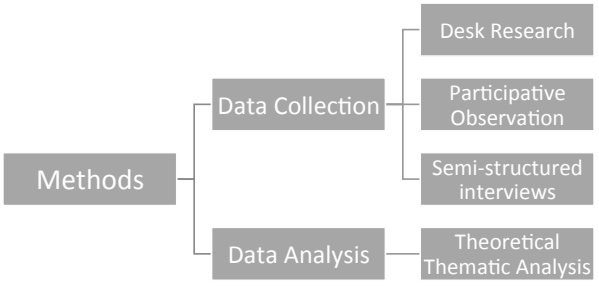


FIGURE 5.1: Methods used in the case studies

Regarding the semi-structured interviews, three types of participants were included in the cases. Interviews with victims of IPV, women non-victims and service providers were used to explore the construction of gender, race and class (second

[8]Hyett et al. [2014].
[9]Warner [2008].

research question of the case studies), to determine the connection between the social categories and IPV (third research question), and discover to what extent domestic laws and policies take into consideration the intersections between gender, class and race and IPV (final research question of the studies). In line with the principles of intersectionality and standpoint epistemology described above, interviews with women victims of IPV about their perceptions and experiences form the core of the research in both case studies. Nevertheless, in order to prevent defining 'gender' based only on experiences of violent and submissive behaviour, women who are not victims of IPV were also included in the sample, by means of interviews or focus groups, in order to balance any possible bias. Finally, interviews with professionals implementing the existing policies on IPV and providing services were included as well. Their testimonies contribute to unveil the inner working of the policies, specially since many victims may have not had any experience with the provision of public services. The relevant types of professionals are identified in each case study, but they include as a minimum members of the judiciary, police officers, psychologist, social workers and personnel of civil associations providing services.

Regarding the interview structure, three interview protocols were used with each type of participants: one for victims, one for women non-victims and one for service providers, included in Appendix C. During the interviews, questions focused on the experiences of the participants in order to explore the social construction of the pre-determined categories, gender, race and class, in the specific case under review using different techniques described in each chapter. Questions started by addressing the social categories 'additively', enquiring about the specific elements of the category, and in a second stage, about the categories as such.[10] In addition, the intersection of categories was explored both by explicit intersectional questions and also by focusing on each social category independently.

Finally, regarding participant observation, attention to everyday scenes, events and behaviours that take place outside the interviews provide useful information

[10]In line with Bowleg who recommends to avoid asking the respondent to 'separate' each social category of distinction/inequality, and even rejecting to do so at the potential request of the interviewee. See: L. Bowleg 'When Black + Lesbian + Woman ≠ Black Lesbian Woman: The methodological challenges of qualitative and quantitative intersectionality', (2008) *Sex Roles*, 59: 312-325.

about the larger social context in which the participants are embedded. These observations were captured in field notes, and used for the interpretation of collected data and triangulation.[11]

5.4.2 Data analysis

In order to explore the social construction of the core categories of analysis in these case studies, (gender, race and class), and their connection to IPV, each category was first analysed separately and sequentially, and then the interconnections between social categories explored. Authors suggest that an additive analysis before the interactive analysis of social categories is needed, because the meaning of each category needs to be isolated.[12] Gender was the starting point, followed by the other categories.[13] In addition, new elements are expected to result from the studies. Thus, beside the pre-determined social categories, emerging categories should be recognised and added to the analysis. In consideration to these expectations, data was analysed using theoretical thematic analysis approach.[14] Thematic analysis is a widely used technique for identifying and analysing themes in qualitative data that allows to establish a codebook a priori. Pre-selected social categories of distinction can thus be incorporated early on while also capturing new emergent data.

In addition, data was analysed in both case studies according to a process inspired by the six phase method described by Braun and Clark,[15] yet adapted to thematic analysis with a codebook developed a priori,[16] included in Appendix D, and different types of respondents. Figure 5.2 illustrates the different phases of the analysis.

[11]For an intersecting account on 'accidental ethnography' see: L. A. Fujii, 'Five stories of accidental ethnography: turning unplanned moments in the field into data', (2014) *Qualitative Research*, 1-15.

[12]Cuadraz and Uttal, cited by Bowleg, 319.

[13]Shields argues that gender constructs maintain the subordination of women, arguing that even if in some situations gender is not the most important aspect of identity, it is the 'most pervasive, visible and codified'. Shields, footnote 9, 307.

[14]R. E. Boyatzis, *Transforming qualitative information: thematic analysis and code development*, (Sage, 1998); J. Fereday and E. Muir-Cochrane, 'Demonstrating rigour using thematic analysis: A hybrid approach of inductive and deductive coding and theme development', (2006) *International Journal of Qualitative Methods*, 5(1).

[15]V. Braun, and V. Clarke, 'Using thematic analysis in psychology', (2006) *Qualitative Research in Psychology*, 3:2, 77-101.

[16]Fereday and Muir-Cochrane [2006].

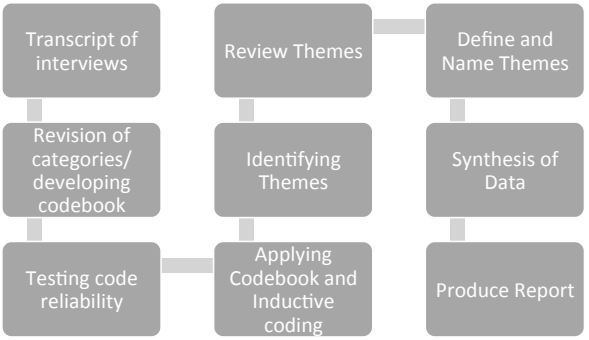


FIGURE 5.2: Procedure for data analysis

In the first phase, with the help of student assistants, interviews were transcribed literally in Word documents, and later anonymised. In the second phase the codebook was developed according to the core social categories of analysis: gender, race and class. These preselected core categories were translated into main codes categories, ('top-level nodes'), each of them containing sub-codes covering the categories' constitutive elements ('child codes'). The specific codes are described in each chapter. Codes were created in NVivo for Mac with reference to Boyatzis and identified by 'label' and 'definition'.

In the third phase the reliability of the codes was tested. One set of interviews was selected as test piece in each case study. The codebook was applied to the interviews and then a student assistant was asked to code the documents as well. Student assistants had been trained in coding by me. The results were compared and inconsistencies discussed, and when we both coded consistently no modifications to the codebook were made.

During the fourth phase, the proper analytical process began. Interviews were read and coded in sequence, dividing them by sets. In both cases, I started with the interviews to women who were not victims of IPV, then I continued with the interviews to victims, followed by the interviews with judiciary personnel, with police agents, then with psychologists, and then with social workers. Finally, interviews with the representatives of the civil associations were read and coded. Interviews were coded by trying to discover 'meaningful units of text'[17] and using the inductive approach of Boyatzis to discover emerging categories (new nodes), which were added as 'top-level nodes' or 'child nodes'. After finishing coding one set of interviews and identifying themes, themes were integrated, renamed or separated if needed. This review of themes constitutes the fifth phase of my analysis.

[17]B. F. Crabtree and W. L. Miller, *Doing Qualitative Research*, (SAGE, 1999).

I then moved to the next set of interviews, and followed the same procedure. This process through phases four to six consisted of an iterative process.

In relation to interpreting data, Bowleg warns that in the case of qualitative methods, focusing on explicit and majority accounts, ignoring the silences and underestimating the views of the minority of participants, may result in wrong interpretations. In fact, considering narratives expressing what appears as the perspective of the minority of participants may help the researcher to learn about the context and connect it to the individual's views. For this reason, attention was paid in order to identify agreement and disagreement in the narratives, and both were taken into account in the discussion of the results.

When all sets of interviews were coded, themes were once more reviewed and overarching or core themes that seemed to capture the most important aspects were identified. I then named and defined the themes and the connected story, and then analysed the connection of each theme with the research questions. In both case studies, triangulation of data was made per topic or theme, including all data. After all themes were clearly identified and determined, I synthesised the data in different ways: text, tables and figures. In the final stage, in the preparation of the report, I first incorporated all selected quotations in Spanish. When the text was ready, quotations were translated into English. The quotations were chosen in order to illustrate either the most common views, or views that were clearly opposed to the majority.

Chapter 6

Case study I: Romani women victims of IPV in Granada

> It is not the place of public agencies to attach legal identities or disabilities to cultural membership or ethnic identity. This separation of state and ethnicity precludes any legal or governmental recognition of ethnic groups, or any use of ethnic criteria in the distribution of rights, resources, and duties.
>
> Will Kymlicka

6.1 Introduction

As explained in chapter 5, the objective of the empirical studies in this thesis is to apply an intersectional approach to Violence Against Women (VAW) empirically, in order to identify gaps in legislation and policies on VAW, and indirectly determining advantages and difficulties of including such requirement within the human rights framework on VAW. In this particular case, I deploy a 'group-centred

approach' to VAW by focusing on Romani women victims of Intimate Partner Violence (IPV) in Granada. This case study constitutes an empirical analysis of an intersectional framework, using case study methods.

6.1.1 Justification of the case study

Why Romani women? As discussed in chapter 4, Roma constitute a 'vulnerable group' in the eyes of the European Court of Human Rights (ECtHR), providing in itself a valid starting point for the selection of the group of women to be empirically analysed. Indeed, Roma constitute the largest minority in Europe, approximately 10 million people,[1] living in extreme inequality, marginalisation and exclusion.[2] Their social situation constitutes one of the 'most pressing developmental challenges.'[3]

The situation of Romani women merits special attention. Several studies have addressed the gender dimension of the unequal position of Roma.[4] One of these reports, conducted in Central European countries, examines the social situation of Romani women across the domains of employment, education, housing, health, and domestic violence and highlights the 'multiple discrimination' that Romani women suffer based on their gender and ethnicity, explicitly adopting an 'intersectional

[1] 'The situation of Roma in 11 EU Member States - Survey results at a glance', Fundamental Rights Agency (FRA), United Nations Development Programme (UNDP), (2012). Available at: http://fra.europa.eu/sites/default/files/fra_uploads/2099-FRA-2012-Roma-at-a-glance_EN.pdf [Last accessed 10 December 2014].

[2] 'Avoiding the Dependency Trap', UNDP (2002). Available at: http://hdr.undp.org/sites/default/files/avoiding_the_dependency_trap_en.pdf; D. Ringold, M. a. Orenstein, and E. Wilkens, 'Roma in an Expanding Europe'. The World Bank, (2004). Available at: http://documents.worldbank.org/curated/en/2004/12/5518636/roma-expanding-europe-breaking-poverty-cycle [Last accessed 10 December 2014].; Roma in 11 EU Member States (2012), supra.; 'EU-MIDIS Data In Focus Report: The Roma', FRA (2009). Available at: http://fra.europa.eu/sites/default/files/fra_uploads/413-EU-MIDIS_ROMA_EN.pdf [Last accessed 10 December 2014], and the preliminary findings of the 'Multi-Annual Roma Programme', FRA (2011). Available at: http://fra.europa.eu/DVS/DVT/roma.php [Last accessed 10 December 2014].

[3] Roma in an Expanding Europe (2004), footnote 2, 2.

[4] E. Cukrowska and A. Kóczé, 'Interplay between gender and ethnicity: exposing structural disparities of Romani women.' Analysis of the UNDP/World Bank/EC regional Roma survey data. Roma Inclusion Working Papers. Bratislava: UNDP, (2013). (focusing on Albania, Bulgaria, Bosnia and Herzegovina, Croatia, FYR Macedonia, Montenegro, Serbia, and Romania) and 'Analysis of FRA Roma Survey Results by Gender', available at: http://fra.europa.eu/sites/default/files/ep-request-roma-women.pdf; European Monitoring Centre on Racism and Xenophobia (EUMC) 'Breaking the Barriers: Romani Women and Access to Public Health Care' (2003); Expert Group On Gender Equality, Social Inclusion, Health And Long-Term Care (EGGSI), 'A Case for Gender Equality?' 'A Case for Gender Equality? Ethnic Minority and Roma Women in Europe', European Commission (2010).

approach' and using 'intersectionality as analytical tool'.[5] Yet so far, no official study elaborates on what such 'intersectional approach' entails theoretically and methodologically. This case study, focusing on both aspects, is thus in that sense, a useful addition.

Why Spanish Romani women in Granada? The countries with the largest Roma population are Bulgaria, Hungary, and Romania in Eastern Europe and Spain in Western Europe.[6] Among these, Spain has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention) and in recent years, it has adopted comprehensive legislation and policies on VAW. For this reason it was preferred in order to conduct the study. In addition, my language skills could facilitate a deeper immersion in the community and allow me to perform the interviews without the need of a translator prevents additional interpretation bias.

Within Spain, the majority of Roma live in Andalusia, more precisely, in the province of Granada. The University of Granada, having performed numerous studies focusing on the local Roma population, provided me with readily available information for conducting the case study. Within the province, I decided to focus on the city and not on the towns where Roma are a majority since that could lead to a biased view on access to services. Within the city, I centred my study on a northern neighbourhood of the city called 'Almanjayar', where a very large Romani community is settled with few non-Roma population.

The focus on Spanish Romani women (*'gitanas'*), that is, nationals of Spain for generations, instead of including foreign Romani women (*'Roms' or 'gitanos del este'*) was not voluntarily, but followed from the impossibility to conduct taped interviews with them.

Why Intimate Partner Violence? As explained in chapter 5, IPV was the only type of violence analysed at the level of United Nations (UN), Council of Europe (CoE) and the Inter-American system. In addition, the decision to focus on IPV was enforced by the existing policies on violence against women in Spain, since they focus on IPV in particular.

[5]UNDP (2013), footnote 4, 8.
[6]EGGSI (2010), footnote 14, 97.

6.1.2 Research Questions

The research questions outlined and justified in chapter 5 can now be refined in this chapter in relation to the specific case study. The main modification relates to the category of 'race', which is a flexible notion defined by specific discursive elements, as explained in chapter 2. In the specific context of Spanish Roma, 'race' is commonly presented by the racial discourse as 'ethnicity'. Therefore, the concrete research questions read:

1. What are the laws and policies applicable to IPV in Granada and what do they entail?
2. How are gender, ethnicity and class constructed in the Roma community according to Romani women, victims and non-victims, and service providers?
3. How are gender, ethnicity and class, as constructed in the Roma community, connected to IPV, according to the Romani women, victims and non-victims, and service providers?
4. To what extent do current domestic policies on IPV take into consideration the intersections between gender, ethnicity and class and IPV against Romani women?

The first research question will be answered in subsection 6.4.1 by conducting desk research on the existing legislation and policies on VAW. Questions two and three will be answered based on the interviews with Romani women victims of IPV, women from the Roma community and service providers and by my own observations during the study. Question 2 will be addressed in section 6.4.2 and question 3 will be dealt with in section 6.4.3. The final question, addressed in section 6.4.4, will be answered by comparing the findings regarding these two questions with the current policies on IPV and Roma people in Spain.

In the sections below, I explain the aspects of the research design that are specific to this case study, including the procedure to contact the participants, a description of the participants of the study, the structure of the interview and types of questions posed, and how I analysed the data. The contextual boundaries of the case are also described, providing background information about the social situation of Spanish Roma. I then present the results, dividing them per research question. Finally, in light of this empirical experience, I discuss the contribution of applying an intersectional approach to cases of IPV against minority women and reflect about the implications.

6.2 Research design and methods

As already clarified in the previous chapter, a qualitative case study methodology with multiple data collection and multiple analysis methods was used, shaped by context and emergent data.[7]

6.2.1 Data collection methods

In this section, the methods of data collection, desk research, interviews and participant observation, are described.

a Desk Research

Contextual boundaries of the case This was the first step in the research design, aiming at providing a first impression of the social situation of Romani women in Spain by means of a desk research of official reports on quantitative surveys conducted by the EU and Spanish institutions, discussed in section 6.3. This background information allows the reader to contextualise the discussion of the results of the qualitative study. The focus of the review lies on education, employment, health, family, violence, discrimination and housing.

Applicable legislation and policies on IPV Desk research was used to identify the applicable normative and policy framework applicable to IPV, discussed in subsection 6.4.1. In doing so I analysed the applicable national and local laws, action plans and programmes. I also reviewed (unpublished) expert reports from three research projects studying legislation on violence against women in European states: Feasibility study to assess the possibilities, opportunities and needs to standardise national legislation on violence against women, violence against children and sexual orientation violence (2010)[8], Realising Rights (2011)[9] and

[7] N. Hyett, A. Kenny, and V. Dickson-Swift. 'Methodology or method? a critical review of qualitative case study reports' *International Journal of Qualitative Studies on Health and Well-being* 9 (2014).

[8] Final report available at: `http://ec.europa.eu/justice/funding/daphne3/daphne_feasibility_study_2010_en.pdf` [Last accessed 10 December 2014].

[9] Final report available at: `https://www.tilburguniversity.edu/upload/0669e981-140a-4b05-acc2-5a2428743222_apRRS.pdf` [Last accessed 10 December 2014].

POEMS: Mapping the legislation and assessing the impact of Protection Orders in the European Member States (forthcoming).[10]

Refining the pre-determined core categories of analysis Gender, race and class, generally outlined in chapter 2 were revised in order to properly capture the specific case of Romani women. Consequently, I conducted a desk research of the existing literature on Roma in Spain, examining the basic social and cultural constructions around gender and ethnic belonging. As a result of this literature exploration, elements that originally were included in gender (sexuality, reproductive role of women and nuptial patterns), emerged also in the category of ethnicity, transformed into kinship practices. Table 6.1 shows the content of the pre-determined categories. Having determined the content of the pre-determined social categories, I drafted the themes and questions for the interviews, discussed in section c.

Core categories	**Aspects according to general theory**	**Aspects according to Romani literature**
Gender	Sexuality: sexual orientation, Reproductive role of women, Body representations, Position within the family, Types of Jobs, Public participation	Sexuality: Virginity, Celibacy Reproductive role of women Marriageability
Ethnicity	Notions of common origin and destiny, Body representations, Religious codes, Cultural codes	Family System: roles of family members, family involvement Marriage system: rituals, age, ethnic belonging of spouses, endogamy. Motherhood aspects: age at first born, number of children, child care responsibilities.
Class	Education Employment Standard of living Social networks	Education: differential schooling, Economic activities: unemployment, family business and traditional occupations. Standard of living: poor housing conditions and health

TABLE 6.1: Redefined core categories of analysis

[10]I had access to unpublished material from these projects since I was professionally involved in them.

b Participant observation

I stayed in Granada during February and March, 2012. The civil association called 'Anaquerando Molino Nuevo', located in the centre of the community became my 'headquarters'. This is a Roma association, providing different types of services to the Roma community, such as social workers' advice, extra-curricular activities for children, training for adults, etc. My daily presence in the association, performing different tasks with the population in general and socialising with the children, was crucial for a quick immersion given the short period of time I could invest in the study. I got in contact with the Roma community by participating in different activities, such as a twice weekly 'breakfast chat' with women, different events and celebrations taking place in the neighbourhood and helping children with homework after school. Visiting the community and the association on a daily basis was crucial in order to gain the trust of the women and tolerate my presence among them, allowing me to observe many different interactions. This participative observation helped my interpretation of the interviews by clarifying practices, customs and expressions.

In addition, my presence in the association allowed me to hold many informal chats that contributed to 'fine-tuning' the language used in the interviews and pointed me to notions need to be incorporated, such as the ability to move around the city, and the community's belief regarding non-Roma. Moreover, spontaneous exchanges and discussions with members of the community regarding IPV, female and male behaviour, occurred almost daily in the context of the association. Although people tended to avoid taped interviews, they were willing to express their view on the matter during these discussions and granted approval for the literal annotation of those statements. These notes, also contribute to the interpretation of the interviews.

c Interviews

I conducted qualitative face-to-face semi-structured interviews with victims of IPV from the Roma community and women from the Roma community who had not experienced IPV. These interviews provided a wider view on IPV and allowed me to compare the views of victims with non-victims, preventing the identification of certain victims' view as representative of all women. I also interviewed members

of the judiciary, service providers from the specialised centres on IPV, service providers non-specialised on IPV who were located in the neighbourhood and Roma civil associations located in the neighbourhood and providing support to the community. Interviews were held in Spanish, took one hour on average and were tape recorded. All participants were informed about the purpose of the study and signed an informed consent form.

Some enabling and projective techniques were used in the interviews. Service providers and victims were shown official brochures with information about the existing services and support for victims of IPV and were asked their opinion about them. Stake holders were also asked to draw a diagram explaining the trajectory that victims of IPV had to follow in order to get support. Initially, this technique was tried with the women victims as well, yet most of them had great difficulties in doing so because of illiteracy and lack of information. These diagrams have been used to triangulate the information from the interviews and the desk research about the existing policy on IPV discussed further below.

Interview Procedure The first step toward establishing contact with Romani women was to contact the civil associations providing support to the Roma community. Although there were three Roma civil associations in total, one of them with national presence, the two associations located at the heart of the community were preferred. Personal contacts with staff from the Department of social work of the University of Granada were essential to contact those associations, since there had been no possibility of establishing direct contact via email or phone.

Flyers promoting my study were designed and printed, and taken to the two support centres specialised on IPV and the support centres in the neighbourhood. None of the victims included in the sample was recruited in connection to those promotion efforts. In all cases, the interviews with Romani women victims of IPV were facilitated by the civil association 'Anaquerando'. The staff of the association indicated to me potential participants and made some initial informal introductions, and after several informal encounters, the women agreed to participate in the interviews. In two cases, women agreed to the interviews but required to be in the presence of a friend. All interviews with victims were performed during the final two weeks.

The women from the community who I selected as 'community respondents' were contacted in different ways. Three were contacted through the association, one was contacted through personal connections, and two I met in the street.

In order to perform the interviews with the service providers, all formal authorisations were requested. I was authorised to conduct interviews by the Provincial Delegation for Equality and Social Well-being (Delegación Provincial para la Igualdad y Bienestar Social), the General Directorate on Gender Based Violence (Dirección General de Violencia de Género), the Main Prosecutor of the Court on Violence against the Woman (Fiscal Delegada del Juzgado de Violencia sobre la Mujer), the Chief Sheriff of the the National Police in Andalusia (Cuerpo Nacional de Policía de Andalucía Oriental), the director of the Andalusian Institute of the Woman (Instituto Andaluz de la Mujer), and the director of the Municipal Centre of Support to the Woman (Centro Municipal de Atención a la Mujer). Regardless of these, in practice, in some cases, the participation of the service providers was determined by either my direct involvement with the University of Granada or by my involvement with 'Anaquerando'.

Participants Seven native Spanish Romani women victims of IPV, described in Table 6.2 participated of the study. Three out of seven had reported the violence to the police, and two of them had received protection orders. The third woman was denied the protection order, yet she was accepted in a shelter bypassing the judicial procedure. All victims self-identified as Roma, although three of them had one non-Roma parent. Two of the victims were still in the relationship with the abuser, while only one was in a shelter at the time of the interview. This woman had a jail conviction record, had drug addictions in the past and was HIV positive.

Victim	**Age**	**Age / married**	**Child**	**Age / child**	**Union**	**Ethnicity**	**Reported**	**Protection order**
1	30-39	18	Yes	18	De facto	Roma	Yes	Yes
2	20-29	17	No	N/A	De facto	Roma	Yes	Yes
3	30-39	16	Yes	18	Married	Roma	No	No
4	30-39	18	Yes	20	De facto	Roma	No	No
5	30-39	13	Yes	N/K	Married	Roma	No	No
6	30-39	14	Yes	18	Married	Roma	Yes	No
7	40-49	17	No	N/A	Married	Roma	No	No

TABLE 6.2: Interviewed victims of IPV

Six Romani women who had not had any experiences with IPV were interviewed as well, to clarify certain notions and provide their perceptions about the issue of IPV among the Roma. Three women lived in the community, two women had moved out of the neighbourhood and were contacted in a public space in the most touristic area of Granada, and the last participant lived in a 'mixed' neighbourhood that was once the traditional muslim neighbourhood.

Fifteen service providers, illustrated in Table 6.3, were interviewed. Three professionals from judicial trajectory were interviewed: the judge and chief prosecutor from the Specialised Courts on Violence against Women and a criminal judge. Both professionals specialised on gender based violence had more than ten years of experience in their current job. The criminal judge, on the other hand, had no specialisation on gender based violence, and had only four years of experience in her job.

In addition, six professionals from the two centres providing specialised services for victims of IPV were interviewed. In each centre, one social worker, one psychologist and one legal advisor were interviewed. These were all dedicated professionals with an average of five years of experience in the job, although some of them had several years of experience in gender based violence in previous jobs.

Participant	**Sex**	**Ethnicity**	**Dedicated**	**Location**
Social Worker 1	Male	Non-Roma	Yes	Granada
Social Worker 2	Female	Non-Roma	Yes	Granada
Social Worker 3	Female	Non-Roma	No	Almanjayar
Social Worker 4	Female	Non-Roma	No	Almanjayar
Psychologist 1	Female	Non-Roma	Yes	Granada
Psychologist 2	Female	Non-Roma	Yes	Granada
Psychologist 3	Female	Non-Roma	No	Almanjayar
Legal Advisor 1	Female	Non-Roma	Yes	Granada
Legal Advisor 2	Female	Non-Roma	Yes	Granada
Police 1	Male	Non-Roma	Yes	Granada
Police 2	Female	Non-Roma	Yes	Granada
Prosecutor	Female	Non-Roma	Yes	Granada
Magistrate	Female	Non-Roma	Yes	Granada
Criminal Judge	Female	Non-Roma	No	Granada
Shelter	Female	Non-Roma	Yes	Granada

Table 6.3: Interviewed Service Providers

Regarding the police, I interviewed the representatives of the specialised unit for the reception of the formal complaints against IPV, and the unit dedicated to the implementation of the protection orders and other forms of enforcement. These

representatives, one man and one woman, were both specialised on IPV and had in average five years of experience in the job.

Regarding locally based services, three service providers of the Community Service Centre and the Health Centre located in the neighbourhood were interviewed. They were a psychologist and two social workers. These professionals had no specialisation on IPV. They provided basic services to the community and had an average of five years of experience in their jobs.

Finally, the representatives of the two Roma associations located in the neighbourhood were interviewed. One of them was Roma, and the other was a foreigner. Neither of them had specialisation on gender based violence and had an average of 8 years of experience in their job.

Interview structure Three interview protocols, included in Appendix C, were used for each type of participants: one for victims, one for Romani women non-victims and one for service providers. The interview protocol for Romani women victim of violence focused on their personal experience with violence, their needs and the responses found. The interview protocol for service providers focused on the professional experience with Romani women victims of IPV and their perceptions about violence affecting them, their needs and the responses provided by the system. Both victims and service providers were asked to elaborate on cultural belonging, gender construction, socio-economic class and discrimination. The interviews with community women non-victims focused, above all, on the issue of IPV against Romani women.

The first part of the each interview focused on personal details about the participant. In addition, I asked all participants to self-identify themselves. Although some participants self-identified spontaneously, for most participants, this was not an easy task. In order to provide an illustration, I auto-identified myself. Service providers were asked about their role in the organisations and how they came into contact with women victims of IPV. They were also asked about their work-related satisfactions and frustrations.

Victims' personal (and social) characteristics were discussed further in order to explore the participant's perceptions on the role of gender, ethnicity, and class. Regarding gender, since literature highlights the reproductive and child bearing

role of women and their role within the family,[11] participants were asked about number of children, age when the first child was born and the relation with the family (parents, siblings). Victims were also asked about the age when they entered into marriage, what type of marriage it was (ritual, civil, de facto) and the circumstances around it. In addition, victims were asked where they met their husbands and about the family's attitude toward him.

I tried to explore whether Romani women perceived belonging to the Roma ethnicity indeed as a category of 'subordination' or 'discrimination' by asking the following questions:

- Can you tell me something nice and positive about being Roma?
- What are the downsides of being Roma?
- Do you feel discriminated/marginalised?

Similarly, service providers were asked to mention some advantages and disadvantages they saw connected to Roma belonging.

In relation to socio-economic class, questions revolved mostly around education and bread-winning activities. References to housing availability arose frequently during the interviews, yet housing conditions in particular were examined by direct observation, and were for that reason not particularly covered in the interviews. Furthermore, I asked women about their perceptions and feelings toward the neighbourhood.

The second part of the interview focused on the experiences of violence. When did the violence start, what type of violence took place, and the women's needs as consequence of violence. I asked women about their attempts to find help, whether they had received help and what kind of support they were still lacking. I also asked what would the perfect solution for their problems 'in an ideal world'.

I asked service providers what they thought these women's needs were and whether those needs were met by current policies. I asked them to draw a diagram explaining how the public response to IPV is organised today.

The third part of the interview focused on the perceptions of specificity of the group of Romani women as victims of IPV. These questions, directed at victims,

[11] E. Martin and J. F. Gamella, 'Marriage practices and ethnic differentiation: The case of spanish gypsies (1870-2000)', (2005) *The History of the Family*, 10:45-63 .

non-victims and service providers alike, tried not to point to specific categories, but aimed at capturing the 'intersectional aspects'. I asked participants whether they consider Romani women victims of IPV to be a special group, because of extra vulnerability or because they had special needs. I explicitly asked women wether they thought non-Romani women would have different needs than Romani women had.

Service providers were explicitly asked about the relationship between gender, ethnicity and class and IPV affecting Romani women:

- Can you identify social categories, such as gender, ethnicity or class, that you think influence IPV against Romani women?
- Do you think Romani women have special needs, constitute a particular group of victims, or somehow are different than other women?

Participants were also asked if any specific needs or differences regarding Romani women were being covered by the public policies on IPV, and if not, whether they thought that they should be considered.

I added one more section to the interviews with service providers trying to determine the general background regarding their function:

- Are you aware of international norms on VAW? Are they of use to you?
- What would you consider to be obligations of the State regarding IPV?
- What rights do you think are violated by the violence?
- What do you think is the role of the civil associations?
- Do you think it is needed to look at intersecting categories of subordination?
- Do you think that it is feasible to implement an approach that covers all intersecting forms of discrimination?

In the section below I describe the process of data analysis I followed.

6.2.2 Data Analysis

The data analysis followed the six phase method[12] and adapted to thematic analysis with a codebook developed a priori,[13] as described in chapter 5. In this section, only variations and specifications are discussed.

The first phase related to the transcription of the interviews. In the second phase, the codebook was elaborated according to the categories of analysis. Core categories were translated into main codes categories, (top-level nodes), each of them containing their constitutive elements, (child codes), taken from the general literature discussed in chapter 5 and completed by Romani literature. Policy elements were also translated into top-level nodes (prevention, protection, reparation) and top-level nodes were also created to code intersectionality-related references. The detailed code book is included in Appendix D.

In the third phase, I tested the reliability of the codes by comparing my coding results from interviews with community women to those of a student assistant. The results were compared, and since we both coded consistently I made no modifications to the codebook.

During the fourth phase, I read and coded the interviews sequentially, dividing them by sets. I started with the interviews to Romani women non-victims, then I continued with victims. Interviews to legal advisors, judge, magistrate and prosecutor followed. Then, I focused on the interviews with police agents, psychologists and social workers. In the case of psychologists and social workers, I began by the specialised professionals and continued with the neighbourhood based ones. Finally, I focused on the interviews with the representatives of the Roma associations.

The fifth phase of the analysis consisted on identifying themes, while the six phased was dedicated to integrating, renaming and separating themes. Three overarching themes were identified as capturing the most important aspects emerging in relation to Romani women victim of IPV as described in the raw data: gender roles, naturalisation of violence and family. The themes and the connected story were

[12] V. Braun, and V. Clarke, Using thematic analysis in psychology, (2006) *Qualitative Research in Psychology*, 3:2, 77-101.

[13] J. Fereday and E. Muir-Cochrane, Demonstrating rigour using thematic analysis: A hybrid approach of inductive and deductive coding and theme development, (2006) *International Journal of Qualitative Methods*, 5(1).

named and defined, and then the connection of each theme with the research questions was analysed. After themes were determined, the data was synthesised in text, tables and figures. As explained in chapter 5, quotations were incorporated in Spanish first, and then translated to English.

Triangulation of data was done by means of the narratives collected during the interviews, the diagrams drawn by participants and my own observations. Although triangulation was made per topic or theme, including all data, the interview and diagram of each participant were also compared against each other, in order to discover the coherence and contradictions. Table 6.4 is an illustration of how data was triangulated, in this particular case, in relation to access to specialised services.

Access to specialised services by Roma women		
Source 1	Source 2	Source 3
Interviews	Diagrams	Observation
Interviews with specialised service providers reveal that very few Roma women make use of specialised service providers. Service providers consider that services are widely accessible for all population. Service providers express that Romani women are reticent to contact public institutions, specially the police and judiciary.	Service providers highlight all available services for victims of IPV. Diagrams include the process of reporting to the police and judiciary. Service providers emphasise social services as the most likely to generate interest for Romani women. Romani women express a need for social services (economic, housing, etc).	Accessibility to specialised centres from the neighbourhood is reasonably easy, it requires taking a bus and walking a few blocks. In all cases it is required to announce yourself and if the case is not urgent, make an appointment, particularly for the social worker and legal advisor. Romani women have vague idea of the location of the specialised centres. Romani women say that reporting is the first requirement for getting specialised services.
Interpretation		
Specialised services are not frequently used by Romani women. This cannot be explained by lack accessibility of the centres or difficulties in establishing an appointment. There is a preference for social and legal services, but Romani women say that in order to reach those, they need to report. There is a reticence to report the violence to the police, service providers are aware of this and consider that the provision of services is rather what Romani women prefer.		

Table 6.4: Data Triangulation Chart

In the section below, the boundaries of the case are established, providing information about Romani women in Spain.

6.3 General Background: Social situation of Romani women in Spain

The Roma community in Europe shows great diversity based on different aspects, such as settlement model, culture and religion, legal status, language and period of migration.[14] In Spain, the first wave of migration of the Roma communities dates back to the 14th and the 15th century. The most recent migratory movements, connected to the fall of the iron curtain, the socio-economic instability of the Balkans and the enlargement of the EU, have brought a new community of 'Eastern European Roma' ('Roms' or 'gitanos del Este'), which has not merged with the Spanish Roma ('gitanos').

Considering settlement, Spanish Roma are sedentary, similar to the vast majority of Roma living in Europe. Spanish Roma live both in the suburbs of major urban areas, or in rural areas. There are towns in the province of Granada, such as Atarfe and Loja, where the majority of the population is Spanish Roma. Within the city of Granada, the Spanish Roma are concentrated in three neighbourhoods: Albaicin/Sacromonte, Zaidin and Polgono de Almanjayar. Among these neighbourhoods, Almanjayar is located further away from the city center and is the only one with a population of eastern european Roma. In comparison to Almanjayar, the first two neighbourhoods have a much more mixed population, with a large number of university students living there. Albaicin/Sacromonte, today the main touristic area of the city, are the traditional neighbourhoods were Roma and Mores lived. The Roma population living in all of these neighbourhoods show very particular characteristics.

In relation to religion, the majority of Spanish Roma are evangelic christians (62%). Less than 1% of Spanish Roma speak Romani, the native language being Spanish.

I had no access to current specific data of the Spanish Roma population in Granada. Below, I describe the situation of Spanish Roma population in Spain, with attention to women in particular. Although this information is divided into different sections, these overlap and influence each other. Bearing this interconnection in

[14]Expert Group On Gender Equality, Social Inclusion, Health And Long-Term Care (EGGSI), 'A Case for Gender Equality?' 'A Case for Gender Equality? Ethnic Minority and Roma Women in Europe', European Commission (2010) p. 97.

mind, a more comprehensive picture of the social situation of Spanish Roma is possible.

Education The 2011 UNDP/WB/EC survey shows differences between the Roma and non-Roma population and between Romani men and women in relation to some main issues: literacy, school attendance and drop out rates. In relation to the literacy rate of Roma in Spain, although the gap between Roma and non-Roma remains, the gap between Romani men and women has decreased, particularly for Romani women aged 16-24 years, who even show an advantage (99 % vs. 99%). This is to some extent also the situation in other European countries for the same group of women, since they have reached the same literacy level (89 %) as Romani men of the same age group.[15]

In Spain, the gap in education between Roma and non-Roma children is not so big in pre-school and primary school attendance, while the proportion of non-Roma who are reported to have completed upper-secondary education is also much lower than in other EU Member States.[16] In addition, in relation to the compulsory education, Romani girls and boys seem at equal terms in primary school (70,5% vs. 69,9 %) and basic secondary school (14,7% vs. 17,0%). Nevertheless, regarding higher forms of education such as high school and higher education, findings are reversed and women show lower rates.[17]

In relation to overall dropout rates, young Romani women are at a disadvantage compared with Romani men, showing more drop out of school before the age of 16 (63% vs. 38% in Spain) and fewer continue after the age of 16 (36 % vs. 62 % in Spain).[18] A report published by the Fundación Secretariado Gitano (Roma Secretariat Foundation) examines some factors influencing education attainment by Roma.[19] The report points out that education level achieved by both parents,[20] the family's means and socio-economic situation are the most important

[15]Analysis of FRA Roma Survey Results by Gender, footnote 4, 4.

[16]The situation of Roma in 11 EU Member States, footnote 1, 13-15.

[17]Fundación Secretariado Gitano (FSG), *El alumnado gitano en Secundaria: Un estudio comparado* (Spanish Roma students in Secondary School: a comparative study) (2013), 58. Available at: `http://www.gitanos.org/upload/34/60/EstudioSecundaria.pdf`.

[18]Analysis of FRA Roma Survey Results by Gender, footnote 4, 6.

[19]FSG 2007, footnote 17.

[20]75,7% of children whose parents had no education had abandoned school at least once, while in 75% of cases where parents had higher education, children had never dropped out school. FSG (2013), footnote 17, 157.

influencing factors.[21]

However, the most common motives for abandoning school are connected to 'family matters' (29,5%). A significant difference is found between Roma girls and boys is found in connection to this particular motive (42,7% of girls vs. 14,9% for boys). A detailed analysis of this answer category shows that the main reasons are 'engagement'[22] (41,9%) and having to take care of family responsibilities (35,6%). However, dropping out because of marriage is more common among boys than girls (50,7% vs. 39,1%), while girls dropout more often because of family responsibilities (40,4% vs. 20,5%).[23]Gender differences are also found when the dropout is motivated by the desire to work (21,7% of boys vs. 9,3% of girls).[24]

These findings regarding education to large extent impact on the employment situation of Roma, and certainly, Romani women, as we shall see below.

Marriage system Literature on Romani studies often highlights the traditional and patriarchal family structure found in Roma communities. Romani women are claimed to be in an unequal position within the family derived from the division of tasks between men and women. Girls are expected to marry young and have many children, hindering their education, preventing Romani women from entering the formal labour market or making difficult to combine work and family life.[25] In addition, traditional views on virginity and early marriage affecting Roma have been also reflected in recent reports.[26] Nevertheless, although several earlier studies confirm these views[27], recent Spanish data is missing.

Employment The 2011 UNDP/WB/EC survey finds high unemployment rates for the Roma and a gap between the Roma and non-Roma population regarding paid employment. In addition, there is higher prevalence of informal work among Roma than non-Roma, and wages received are also significantly lower, even if they are of the same age, have comparable education and households composition

[21]Regarding the economic means of the family, the data shows that 88% of households with severe means deprivation reach only primary school education, and only 4% compulsory secondary education. In households with no means' hardship however, 18% reach the compulsory secondary education, 6% complete high school and 1% higher education. FSG (2013), footnote 17, 159.
[22]In the terminology, 'pedimiento'.
[23]Ibid, 66-67.
[24]Ibidem
[25]EGGSI (2010), 123.
[26]UNDP (2013), 68-70.
[27]Martin and Gamella, footnote 11.

is similar to the one of non-Roma individuals.[28] For both Roma and non-Roma, employment rates for women are lower than for men. For instance, the unemployment rates reported for Romani women is on average one third higher than those for Romani men, while in the case of non-Roma the gap between female and male unemployment rates is much lower. Data shows that Romani women are more likely to be full-time housekeepers, while labour participation of men is clearly higher.[29]

The report on employment by the Roma Secretariat Foundation show the Spanish situation in more detail.[30] The incorporation of the Roma population to the labour market typically takes place between the 16 and 24 years of age, in comparison to the non-Roma Spanish population which shows the biggest range of incorporation between 25 and 29 years old. Women show a bigger rate of inactivity than men in both groups, yet Romani women show a larger inactivity rate between the age of 16 and 24, and an increase in activity between 35 and 49.[31]

The main difference between Roma and non-Roma relates to level of qualification for jobs. The inactivity of the non-Roma population until 25 years of age can be explained by the preference for education and preparation in order to obtain qualified jobs and better opportunities in the labor market. In comparison, the Roma population neglects preparation by entering the labor force between 16 and 24.[32] The Roma population is thus oriented to a 'secondary' labor market, that is, low qualification jobs adapted to the lower education level and labor dynamics. Almost half of the Roma population (61%) is engaged in 'street' sales, an uncommon profession in the Spanish labor market.[33]

Regarding discrimination in the field of employment, the 2011 UNDP/WB/EC once again confirms the findings of the previous FRA (2009) report.[34] The Roma Secretariat Foundation, however, found that 55,4% of the Spanish Roma population surveyed considered that discrimination has decreased in the past ten years.[35]

[28]Roma in 11 EU Member States (2012), footnote 1, 16-17; UNDP (2013), footnote 4, 36- 38.
[29]FRA (2013), footnote 4, 9.
[30]Fundación Secretariado Gitano (FSG). 'Población gitana, empleo e inclusion social: un estudio comparado, población gitana espanola y población gitana del este de europa.' Technical report, Madrid, (2011). Available at:`http://www.gitanos.org/publicaciones/empleo%20e%20inclusion/empleo_e_inclusion_social.pdf`.
[31]Ibid.
[32]FSG (2011), footnote 30, 42.
[33]FSG (2011), footnote 30, 44.
[34]FRA (2009), footnote 2.
[35]FSG (2011), footnote 30, 79.

Among those who did feel discriminated against, the majority was between 25 and 44 years of age; unemployed; in urban areas, specially above 100.000 inhabitants and with low education level or illiterate.[36] Regarding the context where they feel discriminated against, data indicates feelings of discrimination in relation to the provision of Social Services and job interviews.[37]

Health In the domain of health, data shows that there is a gap between the Roma and non-Roma population, while women face specific difficulties because of their gender. According to the FSG, contrary to the non-Romani population Romani women show lower life expectancy and higher mortality rates in comparison to Romani men, and also a higher morbidity rate (illness) throughout their life cycle.[38]

Romani women's health limitations are often related to reproductive health: lack of access to family planning, low access to contraceptives and high abortion rates.[39] In addition, high fertility rates of Romani women are exposed to a higher risk in terms of their overall health condition. This is also the case in Spain, where women get pregnant at an early age and continue to do so until relatively old. According to the FSG, there is a lack of awareness about sexual and reproductive rights among Spanish Roma, often consider only in relation to family planning but not as health issue.[40]

The FSG argues that in Spain, access to medical care is affected by responsibilities that Romani women face as a consequence of their role within the family and the community, taking care of children and other family members from a very young age. These responsibilities are part of the gender construction within the Roma community, leading Romani women to pay little attention to their health.[41] In addition, this lack of attention and care of themselves as individuals leads to a premature ageing among the women.[42]

[36]Ibid, 81
[37]Ibid, 84; EGGSI (2010), footnote 14, 120.
[38]F.S.G. 'Guia de intervención con población gitana desde perspectiva de género', Madrid, (2012) 73.
[39]UNDP (2013), footnote 4, 51.
[40]Ibid, 74.
[41]FSG 2012, footnote 38,72.
[42]Ibid, 74.

Housing In spite of having implemented several housing policies during the 1980s and 1990s, Spain still faces slums, overcrowded conditions, 'special' neighbourhoods and urban areas that are socially deteriorated.[43] Nevertheless, the housing situation of native Roma seems to be better than in other European Member states.[44]

Three types of services seem most accessible in the proximity of Roma residential areas: health, schools and child care. Care services for elders and disabled people are less available (only 13,9% and 15,5% respectively), and specialised Roma services are lacking in most cases.[45] Regarding the type of housing, the number of Spanish Roma living in severe marginal situation is low (2% slums, caravans, etc.). These results reflect the integration policies adopted during the past 15 to 20 years. In fact, two thirds of the Roma population surveyed (62,5%) lives in flats with more than 10 apartments, while an important number (30,4%) still lives in single family detached homes. The number of Roma living in flats increases in urban areas, specially in big cities with a population larger than 50.000. Conversely, single-family detached homes prevail in rural areas or in areas with less inhabitants.[46]

Regarding amenities, Roma homes possess in most cases (97%) all basic amenities (electricity, water, toilet inside the house, warming) and are connected to sewers (98%). An important number of homes also possess second level amenities, such as a fridge and washing machine (97,5% and 96%, respectively). Diversity shows in relation to third level goods: while almost all homes have TV, video, a microwave and a mobile phone (above 86%), less than half had a PC, internet access, cable or satellite (43,5%).[47]

Regarding the tenure of the homes, more than of the surveyed homes were of the property of the family (54%), while four out of ten houses were rented (39,8%). An important number of the rented homes were so by the public administration.

Domestic Violence In spite of annual reports on domestic violence rates in the country, no specific data is found in relation to domestic violence against Romani

[43]FSG 2007; 2011.

[44]Problems such as slums, the availability of space and lack of key amenities affect Roma population more than non-Roma. FRA/UNDP, 2011.

[45]FSG 2011, footnote 30, 91.

[46]FSG 2011, 93-94.

[47]Ibid, 95.

women in Spain. For instance, there are no prevalence numbers available. The annual statistics for 2012, the year when I conducted my field research, shows that 52 women were murder, from which only 10 had previously reported the violence, and only 7 had requested a protection order. Andalusia was in second place regarding the number of fatal cases (n=8, 15,4%), after Catalonia (n=13, 25,0%). Regarding the nationality of the victims, the majority were Spanish (n= 41, 78,8%), although it is impossible to know if any of these women were Spanish Roma.[48] Neither are there studies on the social acceptance of the violence within Spain.

In sum, reports suggest that Romani women show better literacy levels than Romani men and higher levels of school attendance in relation to basic education. There are, however, higher drop-out levels among Romani women, mostly due to family responsibilities. Regarding employment, Romani women show larger unemployment rates than Romani men, particularly between the age of 16 and 24. In terms of health, Romani women show shorter life expectancy and higher mortality and morbidity rates, and this appears to be the result of the traditional gender roles assigned to women. Considering housing, although basic services such as health, schools and childcare, and basic and second level amenities appear as generally available, Roma still face overcrowding conditions, slums and socially deteriorated neighbourhoods. Finally, no specific data on gender construction or violence affecting Romani women can be found in Spain.

6.4 Results and discussion

6.4.1 Current Spanish policies applicable to IPV and Roma

The first research question of this study, 'what are the laws and policies applicable to IPV in Spain and what do they entail?', is addressed in this section. In order to do so, national and regional normative instruments applicable to IPV and Roma, enumerated in Appendix B, have been analysed.

[48] Report available at:`http://www.msssi.gob.es/ssi/violenciaGenero/portalEstadistico/docs/VMortales__2012.pdf` [Last accessed 10 December 2014].

Policies on Roma Regarding the native Roma community, several policies were implemented since the return of the democracy in Spain, specially in the field of education, labor and housing. The native Roma population, 'gitanos', have acquired the full right to citizenship according to article 14 of the Constitution, containing the clause on equality before the law. Consequently, gitanos are considered equal to any other Spanish national with no reservations or inclusion in a legally recognised cultural or national minority. As a consequence of this, there is no legal definition of ethnic minorities as entities with differentiated characteristics according to ethnicity, religion or identity. Official data do not allow the direct demographic study of the Roma minority or comparison with other groups, unlike some countries of central and Eastern Europe where Roma have been recognised as a nationality or ethnic minority and their ascription recorded in official records. The consideration of ethnic minorities by public authorities focuses on the management of migration flows, taking only nationality into consideration. Nevertheless, Spain has implemented a variety of policies aiming at the reintegration of Roma, focusing on housing, education, employment and health, the same domains covered in relation to violence against women.

The normative framework on IPV The Spanish Constitution establishes in article 96 that ratified international treaties, after being officially published, have the same normative force as national laws. Therefore, international conventions constitute part of the domestic legal order. Spain has ratified all major international human rights documents applicable in cases of violence against women: CEDAW, ECHR and the Istanbul Convention. Furthermore, the domestic legal framework on IPV is formed by three overarching laws. Organic Law 27/2003 (OL 27/2003) of 31 July, 2004, regulating protection orders to victims of domestic violence, Organic Law 1/2004 (OL 1/2004) of December 28, 2004, on Protection Measures against Gender Based Violence, Organic Law 27/2003 (OL 27/2003) of 31 July 2003 regulating the Protection Orders for victims of domestic violence and Organic Law 3/2007 of 22 March 2007 on the substantial equality between women and men.

OL 27/2003 introduced protection orders for victims of domestic violence into the Code of Criminal Procedure, allowing for expeditious judicial protection order in cases of domestic violence.[49] Domestic violence is understood as any crimes

[49]Code of Criminal Procedure, article 544 ter.

against the life, physical integrity, sexual autonomy, liberty or safety of the spouse, or woman who has had an romantic relation even without cohabitation, a specially vulnerable person who has cohabited with the male abuser or any family member who lives in the same household or is under the protection of the abuser. Protection orders constitute the main remedies available in the Spanish system and must be issued within 72 hours from the reporting of the incident. Through this abbreviated judicial procedure, courts are able to issue precautionary measures under civil and criminal law. As a minimum, protection orders usually include a general prohibition on the abuser to contact the victim besides an order to leave the home and the prohibition to return within a certain period of time. There is no minimum or maximum period specified in the law and it is up to the judge's discretion to decide the period of the protection order on a case by case basis. The protection order can remain valid for years or until there is a final decision on a criminal trial. The breach of a protection order constitutes an offence sanctioned by prison.

Protection orders can be requested by the victim, her family members or anyone with an affective relationship with the victim. A request for a protection order is made by means of a simple standard form that is readily available to the public. Forms are provided by civil and criminal courts, the offices of the Public Prosecutor, offices of Victim Support within the Courts, legal advice centres, police stations, support centres from the municipality, and other public bodies providing support. Forms can also be downloaded via Internet from the websites of all institutions and organisations concerned. These forms are available in the main languages spoken by foreign residents in Spain.

In addition, OL 1/2004 introduced comprehensive protection 'measures' with the aim to prevent, sanction and eliminate gender based violence and provide support to the victims.[50] This law defines gender based violence as violence that, as a form of discrimination, inequality and power subjugation of women from men, is inflicted upon women by their partners, ex-partners or who have been in a similar romantic relationship, even without cohabitation. It adopts prevention measures in the field of education, media and health. Victims have the right to information, comprehensive social support and free legal advice (articles 17-20). They also have

[50]In spite of referring to 'gender based violence' in general, according to the definition used, this law deals with cases of intimate partner violence against women.

labor and social security rights (articles 21-23), and economic rights (articles 27-28). For instance, the law established that victims are entitled to a subsidy for 18 to 24 months in order to provide her with means to become independent. Victims thus, can get the 'Active Re-incorporation Rent' (Renta Activa de Incersión 'RAI') which is an extraordinary contribution for people who face great difficulty to find a job and no other unemployment benefit is applicable. They also have 'priority' in relation to protected housing and senior residences. The law also established tax deduction for employers who hire a victim of IPV.

There is a close connection between OL 27/2003 and 1/2004 since the issuing of a judicial protection order, provides the status of 'victim' to the beneficiary of the order, triggering the immediate provision of support measures by the national, regional and local governments. The protection orders becomes to some extent, the key toward social 'rehabilitation' measures. In the Spanish system, involvement with the judiciary through reporting of the violence is the first step in order to get protection and support, at least formally.

Furthermore, OL 1/2004 established the 'Courts for Violence Against Women' (hereinafter, 'specialised courts'), with competence in criminal, civil and family law. The offences falling under the jurisdiction of the Special Courts are murder, abortion, bodily assault, harm to an unborn child, unlawful detention, violations to the moral integrity, freedom and sexual integrity, or any other offence committed with violence or intimidation. The Courts also deal with violations of the rights and duties of the family, where the victim is or was either the wife of the offender, or linked to the offender by a similar relationship. It can also address other offences if the victims are the offender's own descendants, are minors or legally incapable persons.

Finally, OL 1/2004 art 30.1 established the Spanish Observatory on Gender Violence, a national entity charged with the elaboration of studies, statistical reports[51] and action policies in relation to gender based violence, and with their assessment and evaluation. The last evaluation of the local implementation of OL

[51]The Observatory publishes annual statistics on IPV and death toll: reports available at: `http://www.msssi.gob.es/ssi/violenciaGenero/portalEstadistico/home.htm` [Last accessed 10 December 2014].

1/2004 dates to June 2013 and it seems to indicate that implementation is at an advanced stage.[52]

Mirroring the national laws, Andalusia has adopted a law on preventative and protective measures against gender based violence in Andalusia[53], and a law on promotion of equality between men and women.[54] In addition, Andalusia adopted a Strategic Plan for Gender Equality for the period 2010-2013[55] The regional government has also elaborated a number of Protocols to facilitate the collaboration among different institutions, the provision of support to victims, and health services. They have also established a monitoring agency,[56] and bodies to facilitate women's participation.[57]

The provision of specialised gender-based violence support services in the city of Granada are provided by the Government of Andalusia (Junta de Andalusia) through the Andalusian Institute for the Woman (IAM), and by the Municipality of Granada through the Municipal Center for Woman's Support (CMAM). These two bodies have a similar structure. They provide psychological support, advise by social workers and legal advise. Both have hotline numbers, free of charge, although not around the clock.

In addition, the National Strategy 2013-2016 explicitly incorporates attention to 'vulnerable women'.[58] It thus explicitly addresses the situation of minors, women with disabilities, women in the rural environment, women over 65 years of age and migrant women. Race and ethnicity is not considered as a ground for vulnerability.

From this review, the Spanish system arguably complies, at least formally, with most State obligations as indicated by the international human rights framework

[52]Actuaciones De Las Comunidades Autónomas En Cumplimiento De La Ley Orgánica 1/2004 De Medidas De Proteccin Integral Contra La Violencia De Género (June 2013). Available at: `http://www.msssi.gob.es/ssi/violenciaGenero/Documentacion/seguimientoEvaluacion/DOC/ActuacionesCCAA(2005-2012).pdf` [Last accessed 10 December 2014].

[53]Act 13/2007, 26 November on Comprehensive Preventative and Protective Measures against Gender Based Violence in Andalusia.

[54]Act 12/2007, 26 November on the Promotion of Gender Equality in Andalusia.

[55]Plan Estratégico para la Igualdad de Mujeres y Hombres en Andalucía 2010-2013.

[56]Comisión Institucional de Coordinación y Seguimiento de Acciones para la Erradicación de la Violencia de Género.

[57]Consejo Andaluz de Participación de las Mujeres.

[58]National Strategy 2013-2016, available at: `http://www.msssi.gob.es/ssi/violenciaGenero/EstrategiaNacional/pdf/Estrategia_Nacional_Ingles.pdf` [Last accessed 10 December 2014].

on VAW. They have enacted laws, prohibiting the violence and aiming at prevention, protection and punishment. Spain has provided remedies to victims and support services. It has enacted action plans and strategies, and has established monitoring bodies. It has furthermore, tried to facilitate women's participation, and has gone the extra mile, establishing specialised Courts. Spain has thus, a very detailed and comprehensive policy regarding gender based violence.

Nevertheless, the definition of gender based violence established by the law, to which all of preventative, protective and punitive measures measures apply, falls short from the international definition. Unlike the international human rights framework on violence against women, the Spanish conceptualisation of 'gender based violence' refer exclusively to violence affecting women within the couple, at the hands of the partner, ex-partner or man with whom women had a romantic relationship. It does not consider violence affecting women in the community or the public acts of State representatives, even if this type of violence is encouraged by gender inequality and the unequal power relations between men and women. This sole focus on IPV in relation to gender based violence has been recently confirmed by this 2013-2016 Strategy:

> Throughout this Strategy, the concept 'violence against women' is used as a generic concept, and the concept of 'gender-based violence', abuse or battery, as described in article 1 of Organic Law 1/2004, as the concrete manifestation of violence against women.[59]

Furthermore, the conceptualisation of vulnerable women, as established in this new Strategy, includes age, rurality and migration, leaving race and ethnicity out of the enumeration.

In addition to these limitations, the empirical examination of the implementation of the normative framework on IPV will unveil if it provides sufficient protection for Romani women victims of IPV, and if not, why or how these policies fail.

[59]Ibid, 14.

6.4.2 Gender, ethnicity and class among the Roma according to Romani women, representatives of Roma associations and service providers

In this section, I examine how gender, ethnicity and socio-economic class are constructed in the Roma community according to Romani women, representatives of Roma associations and service providers in order to answer the second research question of the study.

Perceptions of gender Regardless of making explicit references to 'gender', it is unclear what gender as a social category of difference entails for most service providers, even those specialised on gender based violence. They connected gender based violence to being a 'woman' and the relation of domination/submission between a man and woman. Also, they referred to behaviours illustrating the sex roles within the relationship only: women take care of the house and the children, and are not allowed to work outside, while men have the power to decide about all family and economic matters, and even have relationships outside the marriage.

I asked victims about the role of women among the Roma and they also made references to traditional gender roles:

> The woman, well, just normal, like always! The house, your children, but...I see that as normal! My house, my kids, a bit of time in the sun! [Victim 2][60]

Service providers referred to the role of women as caretakers within the family in negative terms, connected to their limited decision-making power. Roma women were regarded as dependent, both emotionally and economically and constrained by the husband and the family. Yet, in the interviews with victims and community women, positive aspects emerged in connection to the traditional care-giving role of women. They pointed out the hard working qualities of Romani women and the hard conditions they often face. One of the community women shared her view of Romani women:

> A fighter, strong, very... what can I tell you, values a lot what she has, because things are scarce, well she values them a lot. And clearly, powerless. Yes, I see her

[60] La mujer, pues, lo normal, lo de siempre, lo de toda la vida! tu casa, tus niños..pe..es que yo lo veo normá! mi casa, mis niñio, un ratico ar so!

> as very powerless in all contexts, because since she had no preparation, she didn't have preparation and other resources so easily, because, since they marry young, well, they don't have a way out. They look they way around it, they are champions, because underneath a rock they will find money to feed their children. But that's what I see, strength. I see the woman with an unnatural strength, more than a man. A fighter, a big fighter.[61]

Also, victim's testimonies challenged the service providers' view that Roma women are economically dependent and not 'allowed' to work outside the home. Some of them had worked while married, and generally, even when unemployed they were the ones 'providing' for the family and not the man. This is also confirmed by the interviewed community women and the representatives of the Roma association. One of them said:

> And since women here are the ones in charge of everything, have you noticed?... and men here all day, lying around, with the guitar, smoking a joint, a much more beautiful life! [Roma Civil Association 2][62]

One victim explained that not allowing her daughter to go to the disco was not because of family or cultural beliefs, but because of 'religion'. Two specialised service providers also pointed to religion as one aspect influencing or enforcing female gender roles. However, it is not clear whether religion reaches male behaviour as well:

> We were evangelics, and we had a life very...we carried a very good life, in the sense of doing what is good, and not going out like girls now...it's not the same anymore. Now girls come back late, they go to the disco. My girl has not been to the disco, but not because I forbade it, our religion did. [Victim 7][63]

[61] Luchadora, fuerte, muy que te digo yo, valora mucho lo que tiene. Pero como escasean sus cosas, pues lo valora mucho. Y claro, indefensa. S la veo muy indefensa en todos los contextos. Porque como no hay formación, no han tenido esa formación y esos recursos tan fácil. Pero entonces, claro, como de jóvenes se casan, pues claro, no tienen por donde una salida. Van buscar la vida como... son campeonas, porque de debajo de una piedra sacan dinero para darles de comer a sus hijos. Eso es lo que yo veo, como una fuerza. A la mujer la veo con una fuerza all, sobrenatural, mas que el hombre. Luchadora. Muy luchadora.

[62] Y como las mujeres aquí son las que cargan de casi todo, lo habrás notado, no?...y los hombres aquíi todo el da, apoyados, que si guitarra, que si porro, que si Una vida mucho mas bonita!

[63] Vamos sido evangelistas. Y vamos, una vida muy muy bien la hemos llevado. En el sentido ese, haciendo el bien, y no salir como las niñas que ahora ya no es igual. Ya las niñas vienen tarde, se van a la discoteca. Mi niña a la discoteca no ha ido pero no porque yo se lo he prohibido, sino nuestra religión.

In relation to male behaviour, service providers emphasised the authoritative role of men over their wives and generalised infidelity as characteristic of Romani men. Victims pointed to controlling behaviours that resemble the typical male behaviour in abusive relationships. These testimonies correspond with the common social perception that machismo within the Roma community is stronger than among non-Roma. Thus, according to most service providers, the particular patriarchal configuration of the Roma society, this 'machismo gitano', appeared as the first 'ethnical' characteristic of the Roma. Romani patriarchy connected 'gender' and 'ethnicity', similarly to what was as expected. However, it has to be pointed out that this identification of male behaviour with typical abusive and controlling behaviour emerges from a sample of victims of IPV and may not reflect the view of Romani women who have never suffered violence. The same applies to service providers, who only deal with this particular group of women. Having said this, the community women agree that the typical male behaviour is indeed dominant.

Nevertheless, one victim suggests that this dominant male behaviour is connected to machismo more generally and is not only derived from ethnicity:

> - *And do you think that is truly a Roma thing? Seeing women like...*
> - I don't think it is Roma, that's what they have put in our heads, since we are children: the woman belongs in the house, and the man is for the street. The man can be with one woman, with another, and another, he gets home, takes a shower and he's clean. The woman can't. It's the Roma custom, not custom, it's what people put into your head through machismo. We have to admit that. [Victim 4][64]

Victims testimonies confirmed what service providers suggested: Romani women are family oriented. The interviewed victims married at a very young age, and the majority had children between their 18 and 20 years old. In three cases, victims explained that they got their first child 'so late' (age 18) because of special circumstances (being in jail or in institutional care) or taking 'longer' to get pregnant than expected. Only one had no children, and she expressed the negative emotional consequences of this, and clarified that it was not her, but her ex-husband who 'had problems'. The majority of the women had 3 children, while one of the

[64]-Y eso te parece que es realmente una cuestion gitana? Osea, esa forma de verla a la mujer como...
- Yo pienso que no es gitana, es lo que nos han metido en la cabeza, desde pequeños: que la mujer es de la casa, y el hombre es de la calle. El hombre se puede estar con una mujer, se puede estar con otra, puede estar con otra, llega a la casa, se lo lava y ya lo tiene limpio. La mujer no. Son las costumbres gitanas, no costumbres, es que es lo que le meten en la cabeza de machista, de machismo eso hay que decirlo.

women had four and another had only one. Victims pointed to motherhood as the most significant aspect in their lives, something they focus all their energies and inspire them to continue. Nevertheless, two of the women said they did not want to get pregnant for the second and third time.

Asking victims about motherhood brought indirect references to sexuality. One of the two victims who got pregnant against her will, explained that her husband did not want to use a condom, and another said that her third pregnancy was 'on purpose' because the abuser knew she was about to break-up with him, suggesting she had been forced by the husband to have sex. This lack of consent for sexual intercourse, however, was not recognised by either of the victims as a form of rape or sexual violence. In fact, none of the interviewed victims made direct references to sexual violence. Another reference to sexual violence emerged in the confession of one victim that 'Romani women, unlike non-Romani women, do not know what sexual pleasure is',[65] suggesting that sexual pleasure is not a realistic expectation in their lives.

Regarding the age of marriage, all interviewed women were married by the age of 18 years old, either following the wedding ritual or by moving in with their partner. The legal minimum age for marriage in Spain was 14 for women in 2012.[66] Two of the interviewed women, however, were married before that age.[67] In spite of these early marriages, women did not see getting marriage as something socially imposed, but as a personal decision. The family and the community had not interfered, victims said. However, only two victims said they married because of love, while two said it was more out of insistence of the boy, and two because of solitude and feeling abandoned. Yet their decision seems connected to other aspects, such as the prohibition to go out or to have boyfriends.

Furthermore, victims agreed that if they lose their virginity then they 'have to' marry. Virginity, Romani women said, is very important and losing it to one man creates the expectation of settling down, 'marring' that man, moving together. This connection between the early marriage and the importance of virginity is supported by the community women and clearly pointed out by one of the representatives of one of the Roma associations. She argued that girls are not allowed

[65] Victim 4.
[66] The minimum age for marriage was raised to 16 in 2013.
[67] See: Table 6.2.

to go out or have a boyfriend because they have to remain virgin. As a consequence, getting married with the first boy that shows interest breaks that barrier, and they can have that 'freedom'.

Nevertheless, marriage seemed the consequence of both keeping and losing the virginity. Women explained the ritual of confirmation of virginity, 'the handkerchief ritual', which is a necessary part of a traditional wedding. During this ritual, the hymen of the bride is torn for the first time by a matron, and the blood is expected to stain a handkerchief. This stained handkerchief is then presented to the families, as a proof of the virginity of the bride. The wedding can thus take place as planned. Among the interviewed victims, only two had endured the ritual of the handkerchief. They recalled feelings of fear and anxiety, yet they had feelings of pride as well, since their virginity brings 'honour on the family'.

Although views of sexuality, the reproductive role of women, and marriage system reflected the construction of gender within the group and formed part of kinship practices at the same time, the dual belonging of such aspects, that is, part of gender and part of ethnicity, was almost never acknowledged in the interviews with service providers. They often made references to the family as guardians of the woman's virginity and her behaviour during and after a marriage, yet such family intervention was considered by almost all of them as part of the particular culture and not really as part of the construction of gender. For instance, when I asked about general advantages and disadvantages affecting Romani women in comparison to the general population, this service provider replied:

> Well, what is a disadvantage for [Romani women] is the severe control that the family exerts on their behaviours. Her family and the family of her partner when they live together, given their idiosyncrasies and ways of understanding relationships.[...] It is very rooted in the male Romani mentality that, well, the woman works in the home and then takes care of the family. [Social Worker 1(specialised)][68]

Service providers did not consider specific aspects of the sexuality or reproductive role of women as something transcending the couple. Their attention was not really directed toward how and where is gender constructed. For instance, although

[68] A ver, lo que si es una desventaja para ella es el control férreo que ejerce la familia sobre sus actuaciones. Tanto la familia propia como la familia del compañero cuando viven enparejao del marido, dado su idiosincracia, y sus formas de entender las relaciones. [...] Si, está muy arraigao en la mentalidad masculina gitana el que bueno, la mujer trabaje dentro del hogar y que entonces cuide de la familia.

service providers pointed to the family in connection to those aspects, they did not refer to gender as created and enforced within the family.

The lack of attention of the role of the family in the construction of gender seems enforced by the definition of gender based violence incorporated in Spanish law and policy: violence committed by a man against his female partner. Hence, violence committed by family members against a woman, even if it is to enforce 'patriarchal gender roles', is not considered gender based violence. A legal advisor explains:

> Well, indeed. Gender based violence is indeed to be maltreated because of being a woman, the man against the woman. The other thing, well, then we talk about family violence when it is my mother in law, my brother, or my father in law that is threatening me and so. It does not fit within gender based violence, but within family violence. [Legal Advisor 2, (specialised)][69]

This suggests that the scope of 'gender' according to the Spanish legislation is limited to one type of relation, 'the couple', and does not capture gender inequalities that play out in other relationships, including the family, even when that violence is used to enforce gender mandates. In spite of providing a broad range of preventative, protective, punitive and even rehabilitation measures, the law is restricted to one dimension only, that of the couple.

Perceptions of ethnicity The disconnection of the family from the social construction of gender seems to neatly fit with the traditional view in literature that particular relations within and among families are characteristic of the Roma. Indeed, service providers, victims and community women pointed to the presence of a very close and involved family as one of the particular characteristics of being Roma, it becomes then an ethnic marker. However, community women and victims pointed to the family presence as advantages or positive aspects of the Roma. The strong family ties are mentioned as a reason for happiness and pride. This community woman explains:

> Roma are like a pine cone, the family, union is very important.[...] If someone is ill, everybody is there. If someone marries, everybody is there. Everything that

[69]Bueno, efectivamente. La violencia de genero es efectivamente que te maltraten por el hecho de ser mujer, el hombre contra la mujer. Lo otro ya hablaríamos de violencia familiar, si efectivamente es mi suegra, mi hermano, o mi suegro el que me esta amenazando y tal y cual, ya no entra dentro del ámbito de violencia de género, sino dentro del ámbito de violencia familiar.

happens, the family will respond. You can count on them sincerely. [Community woman 2] [70]

Victims confirm that family closeness is an advantage, something positive about being Roma. In fact, the same metaphor is used by one victim to illustrate what family represents for her.

- Tell me advantages of being Roma. Positive things, things that make you happy. Something good about being Roma.

- Well, being Roma, [...] we are like a pine cone and that motivates you [...] You cook and all your family comes. That is something we, Roma, like a lot. It's a pine cone, all your family. [Victim 7][71]

References to the interventions within the relationship by the 'extensive family', that is, the parents and siblings of both partners, were equally made among all interviewees. The family was a source of emotional and, above all, economic support. Victims counted on the emotional and material support of their family for starting the relationship, during the relationship and for breaking up. They revealed that they moved in with other family members for up to several years at the beginning of the marriage and again when they break up. This is connected in all cases with economic hardship rather than with seeking emotional support. With scarce own resources, women, and victims of violence in particular, seemed to depend a lot on the means of the family. Nevertheless, the clear economic function of the family was not taken into account by the service providers as being one important aspect leading women to 'allow' certain negative interventions. On the contrary, they seemed to 'culturalise' the relation of the victim with the family, failing to see the economic dynamics surrounding it.

This closeness of the family as economic support and also, as a 'monitoring' agent, needs to be considered in connection to the early age when Roma marry. As commented above, two of the interviewee women were 13 years old when they moved in together, parents remain thus legally responsible for the children: they are still in compulsory schooling, and are not yet allowed to work. A psychologist

[70] Es una piña entre los gitanos, la familia es muy importante la union. [...] Si alguien esta enfermo, están todos. Si alguien se casa, están todos. Todo lo que te pase, la familia responde. Puedes contar con ellos sinceramente.

[71] Contame ventajas de ser gitana. Cosas que son positivas, cosas que te ponen alegre. Algo bueno que viene con ser gitana. - Pues, ser gitana, [...] somos una piña y eso te motiva [...] Haces de comer y que venga toda tu familia. Eso es motivo de lo gitano que nos gusta mucho. Es una piña, toda tu familia

located in the neighbourhood explained this dynamic of the young couple and the parents:

> It is very common to hear 'my mother has prepared me a house', but the house is only prepared for sleeping, it does not have the minimum for eating, the kitchen, the bathroom...so they begin a strange cohabitation, right? A cohabitation at night. And they spend time at the mother's house, but also time with the partner. [Psychologist 3][72]

Some service providers suggested that another characteristic commonly associated with the ethnicity were the close tights within the community, particularly among women. However, this was not a shared feeling among all Romani women. Two community women and three victims agreed with this view, yet three victims expressed the opposite. One victim said the community did not provide any support when needed, and two victims expressed a strong tendency to keep their distance with women in the community.

Religion appeared as a category of difference as well, intersecting with Roma belonging. Roma who participate in 'the cult' (Evangelic Church) and those who do not appeared as two different groups of people. It created a distinction among Roma. I asked one victim:

> - And do you think that religion, the cult, makes a difference among Roma?
> - Well, religion makes, it's different, you see differently, you are not like...Perhaps we walk down the street and people distinguish you from other people. The way you behave, the way you talk, the way you think, you talk to other people. You talk and they say: 'look, that woman must be in the cult'. And then you are singled out. [Victim 7][73]

The interaction between religion and ethnicity, introducing a difference within the category of ethnicity, was also evident by my own observation notes and by informal discussions in the civil association.

[72]Se dice mucho 'me han puesto una casa, mi madre me ha puesto una casa' y lo que pasa es que la casa esta adecuada solo para dormir, no tiene ni lo básico para comer, la cocina, ni en el cuarto de bañoEntonces empieza una convivencia así, un poco extraña, no? una convivencia de noche. Y pasan tiempo en la casa de la madre, pero también tiempo con su pareja.

[73]Y te parece que el ir al culto o no, o sea la parte religiosa, hace mucha diferencia entre los gitanos? Vamos a ver. Hace la religión es diferente, la ves diferente, porque no está como Es que somos personas que a lo mejor vas por la calle y te distinguen de las otras personas. La manera de comportarte, la manera de hablar, la manera de pensar, de hablar con la gente. Vas hablando y te dicen: 'Mira, esa tiene que estar en el culto.' Y eres distinguido.

Perceptions of socio-economic class Regarding socio-economic class, it can be pointed out that stakeholders very often mentioned poor education and low socio-economic means as affecting Romani women in general, and the women that access the services in particular. Indeed, the interviewed victims fit the description of the service providers in relation to education. Two of the victims said they couldn't read or write, two had not finished primary school, two had only primary school level and only one had finished the basic secondary education. Several reasons were presented as interfering with primary education: taking care of the family, health issues or just lack of interest. One of the victims, who after breaking up was in the process of completing basic secondary education, expressed that before getting married she 'didn't like going out, although her mom allowed it, she wanted to study.'[74]

Among the victims, 'education' means 'schooling' and also 'general manners'. Victims pointed to the use of harsh vocabulary and raising one's voice as a typical Roma stereotype. 'People think we are ignorant', was the common perception. According to Roma women, limited education was often seen by non-Roma as an ethnic marker. Nevertheless, 'education' as schooling was always regarded as a means toward finding a job. This was clear when women expressed their wishes toward their own children. Going to school was immediately connected to employment, and without this connection it is no longer appealing. Low education level was considered as an aspect influencing their difficulties in finding a job, particularly in comparison to non-Roma:

> We have less education for working. They also don't want a Roma in the job, very few, we need to have someone who really knows us, or from the district, or someone to give us an opportunity. Someone! Non-Romani women have more advantages for working, but why? We ask ourselves why? Because they have more education! [Victim 4].[75]

Given their general low level of education, Romani women aimed at low qualified jobs where there was competition with migrant workers, such as cleaning and harvesting. This is noted by the victims and one of the representatives of the Roma association:

[74] Victim 1.

[75] Tenemos menos estudio pa trabajar. Tampoco a un gitano le quieren pa trabajar, muy pocos, tenemos que tener una persona que nos conozca realmente, o de la zona, o que nos de una oportunidad (con enfasis) 'alguien'! Las payas tienen mas ventajas pa trabajar, por que? tambien nos preguntamos 'por que'? tienen mas estudios!

> Incorporating a Roma woman from the northern district as domestic help, well, she has to be recommended by the mayor. You see? I'm joking of course, but it is very difficult. Well now that there is high unemployment, people from other nationalities who... that as well, they have lowered the prices a lot, because before, perhaps people paid for domestic help 8 euros an hour, but now people take 5 euros an hour. Well, that takes away jobs from the rest of the people. [Roma Association 1][76]

Victims, community women and the representatives of Roma associations pointed to discrimination in the labor market toward Roma as a very crucial element. One of the community women said the following:

> There is a lot of racism. The Spanish society is very racist toward Spanish Roma. Racist. [...] Much racism, because look, if a Roma woman is called Carmen Fernandez de Heredia, with a clearly Romani name, one that is half Roma and is called Gabriela Fernandez Lopez, and another that is not Roma and is called Angela Dominguez, who are they going to hire? Angela Dominguez! Even if they have the same CV and even if the Romani women know more and have more education. They will hire the other one. [Community Woman 2][77]

The neighbourhood, or district, was deeply connected to unemployment and discrimination. This was made very evident through the interviews with the victims, the community women, the representatives of the Roma associations and also the service providers located in on the community. One of the representatives of the Roma associated explained:

> Also, if there is crisis, this neighbourhood suffers more. Because there are hard-working people, but because of living in the northern district, when they hire you, for a woman to get a job as domestic help, she has to come with a presentation letter. You see? 'She is not a thief', warranted by someone...right? 'She is very

[76]Insertar en un servicio doméstico a una gitana y de la zona norte, tiene que ir recomendado por el alcalde. Entiendes? Te lo digo de broma, pero que es muy difícil. Pues ahora que no hay trabajo, ahora que hay gente de otras nacionalidades que ha Esto también, han puesto los precios mucho mas baratos, porque antes, a lo mejor, el servicio doméstico pagaba 8 euros la hora. Pero hay gente que lo cobra a 5 euros, pues, eso les quita mucho trabajo a los demás.

[77]Pues, bueno, hay mucho racismo. La sociedad española es muy racista con los gitanos españoles. Racista.[...] Mucho racismo, porque mira, si una gitana que se llama Carmen Fernández de Heredia, con un apellidazo gitano, una que es media gitana y se llama Gabriela Fernández López, y otra que no es gitana y se llama Angela Dominguez. A quien van a coger? A Angela Dominguez. Aunque tengan el mismo currículum. Y aunque las gitanas sepan mas, tengan mas preparación. Van a coger a la otra.

clean'. What I mean is that just because of living here, you get labeled, you get limited. [Roma Association 1][78]

There was clear view that unemployment rates in the district, raising up to 70% according to the Roma Association 1, was not purely derived from the current economic crisis. Unemployment in this area, affecting Roma, constituted long standing structural unemployment. Roma from the district have been excluded from the labor market. The reasons seemed to be a mixture of the aspects discussed here: low education, ethnic belonging, gender construction and discrimination.

The neighbourhood, or district, emerged thus as a clear new category of analysis, creating social distinctions and connected with feelings of discrimination and isolation. Yet there seemed to be a distinction between the community and the neighbourhood in itself. The 'community' related to the social network within the neighbourhood or district, while the 'neighbourhood/district' referred to the territorial unit. While many interviewees expressed a sense of belonging to the community and finding support in it, two victims contradicted the idealised 'community feeling' that is supposedly found in the neighbourhood and pointed to frequent quarrels and excessive violence due to drug use and dealing and weapons possession. Almost all interviewed women clearly saw living in the neighbourhood as a very important element in their marginalisation and fuelling discrimination against Roma, particularly in the field of employment. Belonging to 'the northern district', and more specifically to Almanjayar, was enough to put a stamp on them. One of the participants very clearly referred to the process of allocating the Roma to the northern district as a form of segregation and exclusion:

You see the neighbourhood. You see it? I always blame the administration for its existence. It is not the person that marginalised itself, it's the society and the institutions that marginalise people. [...] And if you don't provide me with resources, you don't give me the possibility to act by myself, you make me marginal. You don't open doors, you are not integrating me into society. What are you doing? 40.000 houses and you place all ethnic Roma people there, isolated? Then you are already limiting me. I blame the institutions. I blame them for the

[78]Pero aparte, este es un barrio que si empieza la crisis, si no hay trabajo, este barrio lo sufre más. Porque hay gente trabajadora, pero ya por el hecho de vivir en la zona norte, cuando te contratan, para una mujer que vaya a trabajar, servicio doméstico, tines que ir con una carta de presentación. Entiendes? Digamos, entre comillas: No roba, avalado por una No? Es una mujer muy limpia. Te quiero decir que nada más el hecho de vivir aquí, ya te encasilla, ya te condiciona.

> existence of neighbourhoods like this. I did not decide to come here myself, they brought me here. [Community Woman 1][79]

The merging 'Roma - Northern District' is such that the representatives of the two Roma Associations located in the community emphasised that there was a confusion between what is 'Roma-related' and what is 'District-related'. One of them explained:

> In fact, people who live here and people who work here often think that being Roma is being a resident of Almanjayar with all the characteristics that it entails. And often 90 % of those characteristics are derived from a socio-economic lifestyle and not a genetic configuration of (she laughs), or codes, relations, those things. That's it. [Roma Association 2][80]

Clearly, the particular level of education, employment opportunities and location have direct consequences on the socio-economic status of Romani women in Almanjayar. This is also connected to their ethnicity: low education levels are the consequence of early marriages, which were also connected to virginity and family roles of women. The low education and early reproductive pattern will affect their employability. The place of residence is also connected to ethnicity. Nevertheless, discussing the construction of the category of socio-economic class among Roma seemed particularly difficult for service providers. They seemed to struggle with the idea that belonging to Roma will somehow determine their socio-economic class and many emphasise that Roma have 'equal access' as non-Roma, due to the numerous efforts of the Spanish government during the past thirty years.

Socio-economic class was almost completely invisible in the testimonies of victims, service providers and community women, specially in relation to 'health'. The only explicit references to health as category affecting women were made by the shelter representative, who mentioned specific conditions affecting the women accessing the services, such as alcohol abuse, HIV and drugs abuse, the specialised magistrate

[79]Ya estas viendo el barrio. Ya estas viendo? Y yo siempre culpo la administración de que esto exista. No es la persona que se margina, es la sociedad y es las entidades que marginan la gente. [...] Y si tu a mí no me das recursos, no me dan posibilidades que yo me desenvuelva, me estas haciendo marginado. No me estas abriendo puertas. No me estas integrando en la sociedad. Qua haces? Cuarenta mil viviendas y me asignas todos de etnia gitana allí, apartados? Ya me estas descalificando. Yo culpo a las entidades. Yo las culpo a ellas de que existan barrios como estos. Porque yo no decidí venir aquí. A mi me trajeron aquí.

[80]De hecho tanto la gente que vive aquí como la gente que trabaja aquí, suele pensar que ser gitano es ser un habitante de Almanjayar con todas las características que esto significa, y muchas veces el 90 por ciento de las características están debidas a un modo de vida socio-económico y no a una transmisión genética de (risas), de códigos, de relaciones, de . de esas cosas y ya está.

who referred to disability, and the representative of Roma civil association 2, referring to 'mental health', specifically. She described the situations as follows:

> Mental health is something...to me it is one of the most difficult things here in the district, and one of the things people care less about because...well, this is normal, when you live here you are mental, you know?[...] And then basically the issue of depression and difficulties in social relationships. Often women do not recognise it as depression, but as some 'oh, I can't stop crying lately', 'oh, I cannot get out of the bed', 'I can't stand the child anymore'. Something I hear very often here, 'I can't deal with him, it's very hard, a bad boy, I can't with him', well, that's because these women cannot deal with themselves. [Roma Association 2][81]

Victims made some references that confirmed this perception, yet all related to IPV. I will discuss them in detail in the next section.

One final element indicating some influence on the socio-economic category affecting Romani women was jail conviction. One of the victims explained how her first husband controlling behaviour included forcing her to steal, which lead her to a sentence of 9 years in prison. This prison history had direct impact on her employability, specially because it showed in her 'appearance' due to jail tatoos.[82]

Although to some extent, the combination of factors affecting Romani women in Almanjayar is particular and applies in principle to this very specific intersectional group, the problem areas are similar to the general socio-economic situation in Spain, specially in relation to minoritised groups. The inclusion of elements in one or another category may differ, but they are, in the end, similar. A very eloquent description of this is voiced by the representative of the Roma Association 2:

> The neighbourhood is like an amplifier of what happens in the rest of the country, right? and in the city, due to its characteristic, but it is just an amplifier,

[81] El tema de la salud mental es algo...para mi es una de las cosas más preocupantes que hay aquí en el distrito, y una de las cosas que menos preocupan porque esto es normal, cuando vives aquí eres un trastornado, sabes? (risas) [...] Y luego básicamente el tema de la depresión y de y de las dificultades en las relaciones sociales. Muchas veces no lo identifican como depresión, sino como 'uf, no paro de llorar últimamente', no?, 'Uf, no puedo salir de la cama. Mmm, ya no aguanto al niño'. Una de las cosas que más escucho aquí es 'que no puedo con él, es muy duro, es muy malo, no puedo con él', pues porque no pueden con ellas mismas.

[82] Although only one woman in my sample presented this characteristic, statistical data of female prison population show an overrepresentation of Romani women. See: T. Martín Palomo, 'Mujeres Gitanas Y El Sistema Penal' (2002) *La Ventana* 15:149-174; B. Mapelli Cafarenna, M. Herrera Moreno, B. Sordi Stock, 'La exclusión de las excluidas. Atiende el sistema penitenciario a las necesidades de género? Una visin andaluza', (2013) *Estudios Penales y Criminológicos* 33.

> nothing is invented here. Here everything gets more attention and it is stronger, but truly different it is not. [RCA 2][83]

Synthesis of the findings Based on the findings discussed in this section, one can argue that there are different perceptions about what gender, ethnicity and socio-economic class entails for different groups of respondents. While gender seems to be constructed similarly for both service providers and victims, ethnicity and class are not. In general, service providers seem to regard gender, ethnicity and class as separate, showing some difficulty in recognising relations among them. Nevertheless, this isolating understanding of each category may be an oversimplification of the complex views described above. Indeed, even within the same group of respondents, for instance, differences emerged between specialised service providers located outside the community, and those service providers who are based in the community. Among those located within the community, the perceptions of the service providers in the public system and those in civil associations are also different sometimes.

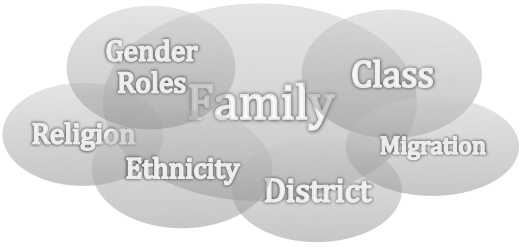


FIGURE 6.1: Relation of categories according to Romani women

However, the women in the community, both victims and not victims, showed similar understandings as a group. Their views, illustrated in Figure 6.1 agreed with those of the service providers in some respects, yet they also contradict some. For instance, two new categories emerged in the interviews with the women and services providers: religion and neighbourhood, while migration was introduced mostly by victims, and only marginally mentioned by service providers. Generally speaking, neighbourhood, migration and religion did not appear as 'separate' but they emerged in connection to the pre-determined categories. Victims' narratives

[83]Esto es como un amplificador de lo que pasa en el resto del país, no?, en realidad y de la ciudad, por sus características, pero solo es un amplificador, aquí no se inventa nada. Aquí todo llama mucho más la atención y es mucho mas fuerte, pero distinto no es.

indicated that neighbourhood, and to some extent migration, emerged in connection to class and ethnicity, particularly in the field of employment. Religion, however, appeared connected to gender roles and ethnicity. The main difference between perceptions among service providers and victims lies in the interconnectedness between categories, clearly present among victims.

Furthermore, different views of victims and service providers emerged with regard to the relations between social categories: Romani women, both victims and non-victims emphasised the pivotal role of the family, connecting all social categories. Hence, family is the dimension where gender, ethnicity and class are created and reproduced. Religion was connected to the family as well since it is a 'family practice', yielding connections and activities among different families and family members. References to (internal) migration were also connected to the family: women said they migrated for work, in the company of siblings, parents, uncles and aunts.

In the next section I discuss how the categories that emerged in this section, and the relation between them, appear in connection to IPV.

6.4.3 Connections between gender, ethnicity and class as constructed among the Roma and IPV against Romani women.

In this section, the third research question of the study is addressed. The connection between the social construction of gender, ethnicity and class and IPV against Romani women is explored. In doing so, the narratives of Romani women and service providers are examined. Since religion, 'neighbourhood' and migration arose as relevant categories in the previous section, they are included in the analysis. Attention is also paid to 'family', since it emerged as pivotal to all categories.

Although in the previous section participants had difficulties in clearly delineating gender, class and ethnicity, they seem to have a much more formed view about these social categories' influence on intimate partner violence. Answers to explicit questions on the influence of multiple categories on IPV against Romani women were often inconsistent with implicit references, such as describing the level of access of Romani women to services or characterising the service providers' experiences with Romani women.

Connections between gender and IPV among Roma The majority of service providers considered that 'gender' was the main and foremost category having an influence on cases of IPV, regardless of recognising that other categories are indeed also important when analysing the situation of Romani women. I asked one specialised social worker about the relation of certain social categories and IPV and she replied that gender was the most influential. Since she had previously referred to many categories, I requestioned her to make sure that gender was indeed the main category in her view:

> - So, taking into account the cases you see, you think gender has been a main factor or the basis of the violence, more than other variables that contribute to the violence?
>
> - Well, obviously if there is economic independence of the woman and a good social position she is less vulnerable, has more chances to leave. It is not the same for a man to abuse in every sense a woman who depends on him and has no family buffer to leave the situation, obviously. But regardless, I think that the gender variable is more determinant. [Social Worker 2] [84]

This view reflects the prevailing opinion among service providers, both specialised and based in the community, who referred to gender in first place but added another category, particularly the socio-economic class. Nevertheless, gender constituted the clear basis and most important factor influencing the violence. These prevailing perceptions point to a 'gender +' approach: gender remains the most influencing category, but some other factors are also recognised as bearing some importance. The shelter representative provided a useful metaphor for this approach when I asked her whether 'gender' was too narrow to capture the complexity of the violence:

> Well, I don't think that [the gender perspective] is insufficient, or that it will collapse, but I think we need to open the 'hand-fan'. Yet, we must have a gender

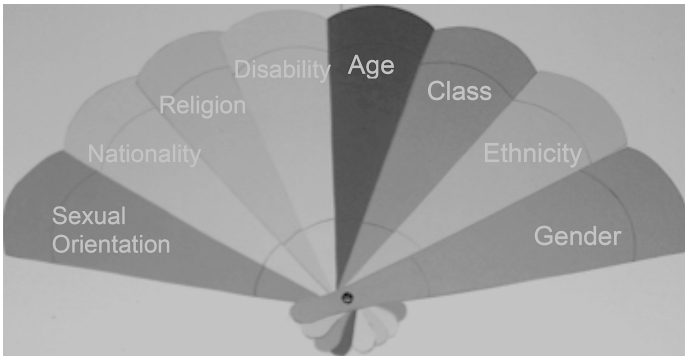
[84] 'Tomando en cuenta los casos de violencia que ves, te parece que ha jugado el genero como principal factor, o como base de la violencia, más que quizás otras variables que han llevado a la vulnerabilidad, por ejemplo?

R: Hombre, si, evidentemente si hay independencia económica, por parte de la mujer y hay una buena posición es menos vulnerable, tiene mas posibilidades de salir. No es igual para un hombre abusar en todos los sentidos, de una mujer que depende económicamente de el y que no tiene colchón familiar para salir de la situación, evidentemente. Pero que la variable género, yo creo que a pesar de todo, es lo que mas pesa.'

perspective because these are women victims, victims of violence because they are women. That is clear. [Shelter][85]

This 'hand-fan' metaphor is interesting because it is used in Spanish language as a synonym of 'range' or 'variety', yet it conveys a clear image for the speaker and the audience. It suggests a range of factors that connect at one point, although gender remains the first and most important factor in relation to the violence. As illustrated in Figure 6.2, this approach, although recognising the importance of multiple factors, does not really imply an intersectional approach since the contact between categories appears to be minimum.

FIGURE 6.2: 'Gender +' Approach: a hand-fan of factors



Only the specialised psychologist seemed more open to question the supremacy of gender and recognised the mutually-influencing effect of the categories, leaving the relationship between gender and other intersecting categories as an open question, undetermined a priori. She said:

- We think that gender goes across the construction of the subjectivity, across. And we think that without the gender variable we cannot understand gender based violence.

- *And how does gender interact with those other categories that also intersect?*

- We should look at how that comes into play... yet that goes beyond me because we are trained for [something else], because this [gender inequality] is what

[85]'Hombre, yo es que no creo que no sea suficiente (la perspectiva de género) o que colapse, lo que creo es que hay que abrir el abanico. Entonces, la perspectiva de género hay que tenerla, porque evidentemente son mujeres víctimas, víctimas de malos tratos por el hecho de ser mujer. Vaya, claramente.'

> we deal with the most, we are white western women. So, we also think that with this [gender] paradigm we cannot cover everything. [Psychologist 2, specialised][86]

Regarding the influence of different social categories on IPV, explicit questions indicated that service providers saw gender as prevailing over other categories. Below, I examine references made in connection to each category during the interviews.

As commented in the previous section 'gender' in relation to Romani women was associated by Romani women and service providers to traditional gender roles and controlling behaviour on behalf of Romani men. This perception was made very clear in relation to questions asked on connections of gender and IPV, and also when asking about particular aspects affecting women. The most referred connection was that of 'naturalising' the violence. Service providers emphasised that Romani women did not recognise the violence as such, that only extreme violence would qualify as IPV. A similar perception seemed to prevail among Romani women non-victims who argued that although they did see psychological violence clearly as violence, victims would not. One of them explained:

> Romani women just don't consider it violence. They are too used to it, sadly. Thus, unless they are thrown off a cliff or they get their head cracked open, for them that is not violence. It is so incorporated, inequality. [...] Thus, sadly, IPV against Romani women is very common. Not only physical violence, but psychological. I would say there is more psychological than physical, but well, if a punch takes place, it's nothing, really. [Community Woman 2][87]

Victims, however, recognised emotional violence even in the absence of physical violence, and even considered that emotional violence may hurt them even more. This testimony of one victim is a good illustration:

[86]- Si, el género pensamos que atraviesa la construcción de la subjetividad, la atraviesa. Y nosotras entendemos que sin la variable del género no se puede entender la violencia de género. - Y como se relaciona el género con estas otras categorias que tambien se cruzan? Habría que ver como se pone en juego esoes que ahí ya me transciende porque nosotros tambien estamos formados, porque mayoritariamente estamos viendo es eso. Somos mujeres occidentales blancas. Entonces pues, operativamente pues, con este modelo, es como que también pensamos que no podemos abarcarlo todo.

[87]'Ellas no consideran la violencia, están demasiado acostumbradas. Por desgracia. Entonces, pues A no ser que la tiren por un barranco o que le abran la cabeza, para ellos eso no es ningún maltrato. Esta todo tan integrado, la desigualdad. [...] Entonces, por desgracias, el maltrato entre las gitanas es muy común. Ya no solo físico, sino psicológico. Yo diría más psicológico que físico. Pero vamos, si se escapa algún palo, no pasa nada tampoco.'

- He has never beaten me in my life, to be honest. But I think that psychologically, even if he doesn't beat you, you get affected by what he has done to you, how he harms you, right? But yes...

- *And have you felt mistreated?*

- Of course I have felt mistreated! because if he is not talking to you, or he is doing you things which are not with love, and he tells you something, like I said, I rather have him beat me up, but do not say those things to me! [Victim 7][88]

Furthermore, when I asked victims whether they knew other cases or considered that IPV was an issue in the community, they all agreed that IPV, above all, psychological violence, was common and that the same patterns apply. They seemed thus, to be aware of what IPV entails and of the prevalence in their social environment.

The contradiction about what victims actually believed constitutes violence and what the rest of the interviewees thought they did, indicates that service providers and Romani women non-victims expected a correlation between understanding certain behaviour as violent and either disclosure or reporting. Since Romani women do not voice the situation and ask for help, they must not consider that what they are experiencing is, in fact, violence. Since women do not act according to the expected response to violence, they are taken as non-responsive. However, their response can only be understood if other aspects and categories, such as socio-economic class and territorial segregation are taken into consideration.

Connections between ethnicity and IPV among Roma Furthermore, although the naturalisation of violence was considered to derive from 'gender roles', the resulting non-reporting was considered to derive from 'ethnicity', showing a 'culturalisation' of the responses of the women. Ethnicity thus, emerged implicitly at the hand of gender-roles and reactions to violence.

Conversely, both representatives of Roma associations challenged the idea of the naturalisation of IPV as something affecting the Roma community in particular. The representative of Roma Association 1 emphasised that controlling behaviour

[88]'Y a mi jamás en la vida me ha pegado, la verdad. Pero yo creo que psíquicamente, ya que no te pegue, sino que te quedas tocada de lo que te ha dado, del daño que te hace. No? Pero que...

Pero tú te has sentido maltratada?

Hombre, claro que me he sentido maltratada, porque si no te esta hablando, te esta haciendo cosas que no es con amor. Y si te dice algo, pues, como yo digo, prefiero que me pegue una paliza, que no me diga lo que me diga.'

and slapping a woman was normal 'in the district', what made it in her eyes a socio-economic issue and not an ethnic issue. The representative of Roma Association 2 explained that the naturalisation of violence is not particular to IPV. Violence in general is naturalised in the district, even among those working in the provision of services:

> I think that similar to other marginal areas [...] the concept of violence has another definition, right? It is understood differently, not so much for people living there, but people who intervene in these situations [...] Things that outside the district would be barbaric, here they seem totally normal, normal! There is a trivialisation of the violence, a naturalisation of the violence that has a lot to do with racism, with all these things, rights? of general violence and even more, violence against women. [Roma Association 2][89]

Very few service providers pointed to ethnicity explicitly as something connected to IPV affecting Romani women, the majority suggested that no difference exists based on ethnicity. Service providers who actually made reference to ethnicity as connected to IPV referred in the first place to 'cultural patterns', 'customs', 'social norms' and 'laws', leading to lack of reporting and more generally, to lack of access to services in general. 'Non-reporting' was actually used as an ethnic marker by some victims and community women as well. 'Romani women do not report': it is uncommon, reprimanded by the community, something that you simply don't do. Women are stigmatised for doing so, according to the representative of the Roma Association 1.

In addition, references to 'family' in relation to access to services and reporting patterns were made by service providers, indirectly pointing to ethnicity. Family members act both as mediators and a catalyst in the violence, and they can either encourage or refrain women from getting help. Indeed, it became clear through the interviews with victims that family related matters have a direct impact in their reaction and response toward violence. One community woman suggested that the family is the first option for disclosure, and family members will engage in a form of 'mediation'.

[89]'Yo creo que como en muchas zonas marginadas, [...] la noción de violencia tiene otro, otra definición no?, se considera de otra manera, no tanto desde la gente que vive, los que vivimos en estos barrios, sino por parte de la gente que interviene, [...] hay cosas que fuera de aquí podrían parecer una barbaridad, aquí parecen totalmente, normal, normales! Hay una banalización, una normalización de la violencia, que tiene mucho ver con racismo, que tiene mucho que ver con todas estas cosas, no? de la violencia en general, y de la violencia hacia la mujer ni te cuento.'

> If the problem is serious, separation with children, ugly things, well, then the nuclear family[90] can intervene. Well, there are many types of Roma, that should be made clear. There are many views, many family feelings, but well, there are moments, depending on the type of Roma, that maybe the whole family can intervene. And they all talk and solve the problems, if it can be solved. [Community Woman 2][91]

Another community woman also highlighted the relevance of women in family mediation:

> If a family has problems with the other family they married with, it is the family members who will do the intervention, the mediation. Always, the father, the brothers, the sisters, the brothers in law, depending who is strongest. The strongest person in the family. Maybe the father is very old and cannot intervene. Or maybe the brother, or the sister. In general, women have a strong role, some women have a strong role, they have an authority role, and the man is there but...the woman goes and mediates. But always from the family clan. [Roma Association 1][92]

It is interesting that in this quote the participant refers to the marriage 'between families' and not between individuals. The family, having been involved from the very beginning of the relationship by providing not only approval but economic resources, will also be involved in the break-up. Victims, however, did not refer to the mediation function of the family, as it is suggested by these community women or sometimes presumed by the service providers. The role of the family seemed to be far more pragmatic: provision of resources for the survival during separation and after. It is above all the economic role of the family that was highlighted by

[90]Interestingly, by 'nuclear family', the respondent seems to refer to the 'extended' family, that is, the parents and siblings of both partners.

[91]'Y bueno, y si el problema es grave, pues, de separación con niños, cosas feas, pues, pueden llegar a intervenir la familia nuclear. Hombre, hay muchos tipos de gitanos. Eso tambièn tiene que quedar claro. Y hay muchas visiones, de muchos sentimientos de familias. Pero, bueno, hay momentos en que, según que tipo de gitanos, tambièn, puede intervenir la familia entera. Y se ponen todos a hablar y allí solucionan las cosas, si es que se pueden solucionar.

[92]Si una familia tiene problemas con la que se ha casado, con la otra familia que esta casada, son los mismos familiares los que hacen la intervención, hacen la mediación. Siempre.. o el padre, los hermanos, las hermanas, los cuñados, depende de los que sean mas fuerte, la persona mas fuerte que sea en la familia. A lo mejor el padre es muy anciano y no pueden intervenir. Tal vez hermanos. O esta la hermana. Mayormente, las mujeres también tienen un papel fuerte, que sea hay mujeres que son papel fuerte, que tiene un papel de autoridad. Y el hombre esta allí y no, pero... El que va y media es la mujer. El hombre o el hermano, o el tio o la tia. Pero siempre del clan familia.

victims who had separated: some of them lived a few years with their parents or siblings, and some where still leaving with them at the time of the interview.

In addition, victims, non-victims and service providers alike pointed out that families may react if violence was reported to the police, leading to family retaliation in some cases. As a result, women that report often have no chance but to leave the community and move to another distant and secret location. Yet even if women can have access to a shelter, the fear of retaliation by the abuser's family remains, since it can be directed against the victim's family because all families live proximity to each other. Once again, we see the 'neighbourhood' as territorial entity emerging as a social category, directly (territorial segregation) and indirectly (via the family) connected to ethnicity.

Victims' testimonies revealed that other forms of disclosure of the violence to persons outside the family seemed both encouraged and at the same time hindered by fears connected to the children's wellbeing. Mothers must behave in such a way as to put children's wellbeing and their wishes before theirs and report to the police when the abuser exerts violence against the children. This feeling seems to constitute a social norm, shared by the family and the community and it also seems the prevailing concern at institutional level, according to some victims. Nevertheless, women do also exert violence on the children to some extent. For instance, one of the victims explained how in order to keep children quiet and let the husband sleep, she would 'have to' hit them. This battering, even if derived from IPV, was not recognised as a consequence of such violence by victims nor by service providers.

Yet victims expressed fears toward 'losing' the children, have them put in foster care or an institution, preventing them from seeking help when violence was directed only against them. For instance, one victim said that having their children 'watched over' would prevent her from going to a shelter. Another seemed to assume that seeking help in the community centre would lead to an assessment of her children's wellbeing, which lead to uncertainty about whether her care would be considered 'enough' by the social workers. In one extreme case, one victim, who faced severe violence, did not even seek for emergency help after getting stabbed by her partner. I asked her why:

> No, because I was always afraid that they would take my children away, since I was in drugs, I was very afraid that they would take my children. [Victim 6][93]

The combination of recovering from her drug addiction due to a new pregnancy and the desire to protect her baby finally encouraged her to report, yet only in the absence of a family to provide her with support.

Non-specialised service providers located in the community confirm these views of the victims, since they expressed that they very rarely address a case of IPV following the spontaneous request of support from the victims. Instead, they initially contact the women in relation to another primary concern that later reveals the violence. The most common primary concerns are indeed children related: lack of school attendance and child care negligence.

The fear of losing the children as a consequence of disclosing the violence is in direct conflict with the victims' belief that the family can either reproduce or prevent violence in the future. Specialised service providers, community women and victims agreed that if IPV is witnessed within the family, it is more likely that boys and girls will in the future repeat the pattern. For that reason, the family is also regarded as the place where prevention of violence must begin. Some victims, however, pointed to mothers as the ones specially responsible to do so. Why women are the ones responsible for 'educating' children not to be violent and react to violence is not clarified in the interviewees, yet this is probably derived from the fact that women are in most cases in charge of everything related to the children.

Service providers recognised other difficulties in dealing with children in situations of IPV. Abusers can keep controlling the women through the children, they said. Victims testimonies are unclear about this. In principle, service providers might be right, since victims and community women seem to indicate that when children voice their wish that mothers do not separate, or re-marry, or they wish to move with their fathers, women seem compelled to please them. On the other hand, fathers do not seem to continue to be in touch with the children once the fathers move out of the household.

[93]'No, porque siempre he tenido miedo que me quitaran a mi mis niños. Como yo estaba en el mundo de la droga y tuve mucho miedo que me quitaran a mi mis niños.'

One of the specialised service providers considered as ethnic characteristic that Romani women do not only avoid reporting, they also wish to separate only temporarily, giving the husband a sort of 'warning'. The specialised police gave a similar account. However, it is very clear from the testimonies of the victims that they regard breaking up as their desired *permanent* solution, but lack the resources to do so. I asked one victim why she decided to resume the relationship:

> If I came back to my husband, because I had no where to go, because if I have a house outside [the neighbourhood], I leave without hesitation. [Victim 4][94]

Resuming the relationship due to lack of resources was confirmed by the representative of the Roma association 2, where a programme of employment for victims of IPV used to be in place. She explained that once the programme was discontinued due to lack of resources, women had two choices: get back to the husband or live in the streets. There seemed to be a very low level of awareness of these situation on behalf of the service providers, who did not seem to recognise the importance of the lack of resources in relation to victims reactions towards the violence. Service providers were mostly inclined to consider 'temporarily' breaking up and reporting as the result of the 'naturalisation' of violence or emotional attachment rather than as the result of economic limitations to do so.

One final ethnic marker described by service providers was the reticence of Romani women toward interacting with police and other non-Roma agencies. For instance, the specialised magistrate, both police units' representatives and some other specialised service providers, even one located in the community, expressed that Roma people prefer to solve their issues 'among themselves'. In line with this observation, some service providers, even those located in the community, suggested that perhaps the solution to this reticence is to arrange that the provision of services is in fact provided by persons from the same ethnicity, an idea often promoted by Roma associations as well. However, the representative of one of the Roma associations argued that promoting the provision of services for Roma *by* Roma, is racist. She explained that the lack of access to the services is not derived from ethnocentric views:

> It is a matter of...I think...adequacy and all. It has nothing to do with ethnicity [...] We need a system that everybody can have access to, to the things they want

[94] 'Yo si volví con mi marido, porque no tena dónde irme, porque yo tengo una casa fuera, y yo me voy con los ojos cerrados.'

> to have access to and when they want to have access, but this is about social justice, not about 'we non-Roma do not understand Roma'!. [Roma Association 2][95]

One of the specialised social workers suggested that there is no 'adherence' of Roma women to the psychological support they offer, and that is the reason why they do not seem interested in psychological support in particular. However, this explanation clashes with the finding that victims in fact do consider psychological violence as such, suggesting that they possibly desire psychological support. Nevertheless, victims seem to aim for support covering their most urgent and basic needs, which are mostly economic, as discussed above. This situation can explain the view of the specialised social workers that Romani women access the services looking for basic provision of services, housing, employment, and economic support, rather than psychological support or legal advice.

One of the specialised psychologists, however, expressed that it is more of a 'lack of connection' between the professionals and Romani women in particular. She points to her own training and perspective on the violence that may not be suitable for dealing with the experiences of Romani women, and concludes that perhaps, it is 'the professionals' inability'. This explanation seemed more in line with the victims testimony who actually expressed their need and desire for emotional support. 'Empathy', having an idea of what women are going through, seems to be what victims are looking for, rather than 'another Roma' to talk to.

So, explicit and implicit references of service providers and Roma women not victims about how ethnicity is intrinsically connected to IPV suggest that there are a few elements considered as ethnic related, such as intra-group mediation, family retaliation and reticence toward institutions, leading to non-reporting of IPV. Nevertheless, Romani women' narratives incorporate missing elements that are essential to fully capture the problem. Family involvement, often in the form of retaliation, is connected to the supportive role throughout the couple's history, and also to territorial segregation. Fears regarding the custody of the children is deeply related to the reticence look for help at institutions.

[95]'Es un problema de creo de adecuación y tal. No tiene nada que ver con la etnia. [...] Hacen falta que el sistema esta hecho para que todo el mundo pueda acceder, acceder a lo que le interesa acceder, cuando le interese acceder, pero eso es cuestión de justicia social, no por cuestiones de 'los payos no entendemos a los gitanos."

Connections between socio-economic class and IPV among Roma Both representatives of the Roma associations considered that it is socio-economic status and not ethnicity, although intrinsically interconnected as explained above, that creates considerable difficulties in prevention and protection of women from IPV. One of the specialised police representatives agreed with this view and explained:

> When a woman who is not Roma faces a situation of violence [...] which is not an incidental event but that has occurred several times, this woman, because of her condition, because she's not economically independent, because perhaps she has assumed throughout generations that she has to endure the violence, and she has been a devoted mother staying at home, well, she is in the same situation as a Romani woman, the same situation. [Police 2][96]

Indeed, as commented in relation to the difficulties to separate from the abuser, victims pointed to socio-economic aspects as the most important aspects making them 'endure' the violence. When I questioned them about their needs and desires, they all pointed to socio-economic aspects: housing, training and employment. All service providers, except for one specialised psychologist and the non-specialised judge, recognised the impact of socio-economic class and economic hardship on reactions toward IPV. For instance, one of the representatives of the Roma associations considered that the economic crisis, worsening the already difficult situation in the district, gives rise to more cases of violence because of stress and a general feeling of despair and frustration.

The majority of service providers emphasised the importance of unemployment in relation to the possibilities of women to react toward violence. This was clearly supported by both representatives of the Roma associations as well. In this respect, victims expressed the strong need to find a way to provide for themselves and their children and break up with the abuser. However, finding a job also provides 'purpose' to their lives. It has a certain rehabilitation effect. Two of the victims expressed their desire to 'work with women' or some similar type of social support. This expression may point to a desire to develop a new network of support, beyond the family and the provision of services.

[96]'Cuando hay una mujer que no es de etnia gitana y pasa por una situación, [...], una situación de violencia que no ha sido un hecho puntual, sino que se ha ido repitiendo, y esa mujer, por sus condiciones y porque económicamente no es independiente, porque ha asumido a lo mejor, a través de generaciones que tena que estar aguantando y que ha sido una madre abnegada en la casa, pues, también se encuentra en la misma situación que una mujer de etnia gitana, igual.

Education has thus an indirect impact on IPV, by facilitating or hampering finding employment, but it has a direct impact as well, since illiteracy affected women in three main aspects: access to information, reporting the violence and participating in training courses of employment programmes. I showed all public brochures available for victims on IPV to the interviewed victims, yet they were not capable of gathering useful information from them. Regarding the reporting process, one of the illiterate victims explained that the police and Court staff had to explain the judicial procedure many times, and she still could not express why her protection order was denied or what stage it had reached. This victim explained that she would like to get a job, yet due to illiteracy, she could not participate in the job trainings offered in shelters.

One aspect of socio-economic influence and also connected to ethnicity, yet not mentioned by the service providers relates to the legal and practical consequences that a de facto union, that is moving in together without a civil marriage or registered partnership, has when separating from the abuser. This form of establishing the marriage, recognised by service providers as the most common among Roma, has legal consequences which impact on the economic situation after breaking up. In particular, the separation of the marital property, including the tenure of the house, is more difficult when the couple was not legally married since there is not clearly applicable separation regime. The partners must 'prove' that they have collaborated equally, in a sort of association, to the couple's property. Although jurisprudence has been developed to recognise the contribution of housewives, it remains a more cumbersome process than a regular divorce. In addition, women would not be able to get alimony for the kids if separating, nor a visiting regime. Breaking up thus, solves the problem of violence, but creates a problem of subsistence, specially when there is no family support.

Regarding housing, women referred to the tenure as a major concern, hindering any possibility to separate from the abuser and their ability to start over. 'Getting a house' was determinant for them in order to leave, specially when they had children. This was considered by the victims as something affecting Romani women in particular, given their general lack of economic means to procure themselves a house on their own, and the limited resources of their families. This inability to procure themselves with housing was perceived as discriminatory by most women, who believe than non-Romani women had economic and family resources enough and housing was thus, not an issue. Moreover, when asked about what their wish

in life was, 'having their own house' seemed more important than a finding a job. Having secured a house, they all seem persuaded that somehow they would manage to afford their basic needs. One victim described her 'dream':

> Every time I fall asleep...I'm gonna tell you my dream (that I nobody tell!)...every time I fall asleep, in my head I have: a house, with my girls, out of this neighbourhood, and fighting on my own. I even see myself with a car, look at that!. [V4][97]

Leaving the community was desired by those victims who were still in the relationship with the abuser, but it was regarded negatively by the victims who were in fact accommodated in a different community. These women complained about feelings of isolation and lack of social resources, except from a woman who had left in order to join family elsewhere. The preferred alternative seemed to be to leave the community, but going to some place where the women had some form of social network.

This contradiction between wanting to leave and when succeeding, the desire to return illustrates the many sides of the 'neighbourhood' as a category. As discussed above, two aspects seem intertwined, the community aspect of the neighbourhood, a social and family network crucial in relation to the limited economic resources of women, and the territorial unity in itself, which seems to create a border between Romani women living there and everything that is outside those borders. In the previous section, the discriminatory aspect of the neighbourhood added to the ethnic belonging emerged particularly in the field of employment. Although this has an indirect effect in the possible responses of women to the violence (breaking up or nor), the territorial unit has another more direct consequence.

As several service providers and women pointed out, 'leaving the neighbourhood to go to Granada', even if that is for one session with the psychologist, or to the specialised police unit, is a challenge in itself. Service providers acknowledged this difficulty, yet they cannot explain it. Almanjayar is not so far away, you can take the bus, and within minutes, you reach the city centre. One Romani woman living now in another district also mocked her cousin who did not dare to visit her in a her new home:

[97]'Siempre que duermo...te voy a contar mi sueño...siempre que duermo, (que a nadie se lo cuento!)...siempre que duermo en mi cabeza es: una casa, con mis niñas, fuera de este barrio, y luchando yo sola. Hasta con un coche me veo, fíjate!

> So my cousin tells me: but you live in another place! Where do I go? I dont know! Girl, you take the 8 (the bus) that from Polígono (neighbourhood) takes you to Zaidín (new neighbourhood of the interviewee). You dont get out of the bus until you see me in the bus stop. I dont go!. And they say it with such fear! There are other women that go out, come back, but that's because, like I tell you, they are apayadas [turned non-Roma], they have studied more. [Community women 5 and 6][98]

My own observations also confirm these feelings and show that the neighbourhood becomes the confined space where many Romani women live their entire lives. They leave only when this is absolutely necessary, such as an appointment with a specialised doctor for the children. In fact, one of the 'activities' the association tried to organise with children, was to take them by bus to events in the city, since they very rarely leave the neighbourhood. This seems in line with what the interviewee expresses, 'learning' how to move around their own city is a matter of having more education, and hence, 'less Roma'.

Other elements also confirm the great importance to the neighbourhood as a physical container. For instance, I asked victims where they met their husbands, and the response was clearly the same: the neighbourhood. The only exceptions were two women who met their husbands while working in another town or province. Yet this experience of living in another town or province was because of need and not desire (no jobs available in the area) and lived as a situation of migration. At least in relation to ordinary matters, women do not perceive their origin in relation to the city, the province or perhaps even the country, but to the neighbourhood. This feeling is probably reinforced by the feelings of discrimination Roma express in connection to their ethnicity and territorial belonging. It is not difficult to imagine that Roma may be discriminated against at some point in the trajectory from the neighbourhood to the city centre. This is a plausible explanation as to why women are so reluctant to access services outside the neighbourhood.

These aspects of the neighbourhood however were not really recognised by the service providers whose most common proposed solution to the reticence to access services outside the neighbourhood was to locate specialised services there. I asked the service providers about the possibility of implementing such idea. The

[98]'Entonces cuando mi prima me dice: Es que tu vives en otro sitio! Que adonde voy? No se!. Niña, que coges el 8 [the bus], que del Polígono te lleva al Zaidín!. Tu no te bajas hasta que no me ves en la parada.Yo no!!'.. y te lo dicen como con ese miedo. Hay otras que no, que salen, que entran, pero porque es lo que te digo, están más apayadas, han estudiado más.'

representative of one of the Roma associations and one of the social workers located in the community highlighted the dangers of moving the specialised services to the neighbourhood: the privacy of the victim could not be protected and violent reactions might be directed to the victim and the professionals. Even if services could be provided without posing risks to providers and victims, and although this could be positive because of finally reaching victims, I think there could be another undesired and perhaps long-term effect of locating the specialised services in the community. Instead of broadening their horizon, the 'container' effect of the neighbourhood would be reinforced, perhaps discouraging women from moving around and feel a 'migrant in their own city' even more.

Regarding the impact of IPV on health, three of the interviewed women made explicit reference to severe depression following the break-up and taking 'pills'. One of them mentioned how this depression prevented women from fulfilling some parental duties in relation to the children, such as taking them to school and attending to them. One woman was infected with HIV by her first abusive husband, having an impact in her employability.

As commented in the previous sections, jail conviction had an impact on the employability, and hence, socio-economic status. Regarding the connection to IPV, the victim thought that her conviction history had no effect in the denial of the protection order. This denial, although I can not attribute it to the victim's previous conviction, is difficult to explain considering that the victim says she had legal advice and had suffered severe forms of physical violence: she had been stabbed, broke a tooth and was regularly beaten while pregnant. In addition, she was HIV positive and recovering from drug addiction. None of these elements however, seem to have been taken into account for the issuing of a protection order.

Synthesis of the findings We can perceive some resistance from the service providers to talk about social categories of difference connected to IPV besides gender when they emphasise that violence is universal, across social categories, and that all women have equal access to services. Only one service provider, a specialised psychologist fully denied that different challenges connect to IPV:

- How do you think IPV is interconnected to other needs, such as economic support, housing, employment, etc?

> - I don't see why. Because gender based violence exists in any social class. Not necessarily with a low socio-economic or cultural level. [Psychologist 1, specialised] [99]

However, several service providers expressed the complexity of IPV affecting Romani women by using a different concept: challenges. For instance, beside the challenge of IPV, some women face another challenge, such as social exclusion. Also, the challenge of IPV can generate new challenges regarding health issues or children schooling. These additional challenges thus, appear as parallel or subsequent. Two service providers saw a different interconnection between these challenges: one community psychologist saw IPV and socio-economic challenges as 'intersecting'. Although she did not explained in more detail, it was clear that she did not consider IPV and economic challenges as parallel, or touching at one point only, like the hand-fan approach illustrated, but with more points of contact between each other. Similarly, one police officer considered them as 'interdependent', suggesting a closer relation and perhaps correlation between them. These interconnections, although perhaps not yet reflecting a true intersectional approach because they focus on the resulting 'challenge' rather than the source of such inequality, they may represent a 'proto-intersectionality'.

Finally, in order to gather a more comprehensive idea of the perceived importance of gender, ethnicity, class and other categories in cases of IPV against Roma, I asked interviewees whether they considered that Romani women constituted a specific group, different than non-Romani women, because of any disadvantage, inequality, added vulnerability, or similar reason. All specialised legal service providers (legal advisors, magistrate and prosecutor), two psychologists, one of the police agents and one victim said they thought that Romani women, and other minority women, constituted indeed a different, more vulnerable group, with specific needs. Four interviewees were not certain whether Romani women constituted a specific and distinct group, yet they all said that this group of women shows indeed some differences, has special needs, is in disadvantage or faces more difficulties to separate from the abuser. Finally, six respondents, (one ordinary judge, one police agent, one psychologist, one Roma association representative and three victims), said that Roma women are not different than non-Romani women, but

[99] 'Cómo te parece que se entrecruza la problemática de la violencia con la problemática de otras necesidades, de ayuda económica, vivienda, trabajo y demás? - No tienen por qué. Porque la violencia de género se da en cualquier estrato social. No necesariamente con un nivel económico y socio cultural bajo.'

nevertheless, highlighted differences. For instance, this community located social worker said:

> They have additional barriers, because of belonging to this minority, but different needs they do not have, no. All women in this situation want the same. Romani women having more difficulties to achieve them is another story. [Social Worker 3][100]

It is difficult to draw clear conclusions about the view of service providers in relation to the specificity of Romani women victims of IPV. It may seem that some service providers culturalise the issue of IPV among Roma women even when they do not recognise them as a specific group, and conversely, it may seem that clearly pointing at Roma women as specific group not necessarily culturalise the issue. I think this lack of clarity is derived first of all, from the phrasing of the question since it may have been too loaded for the interviewees on the one hand, leading to a 'culturalised answer', or trigger a response in line with moral (and legal) correctness on the other, at least for service providers. All in all, from the answer we can argue that the great majority of the interviewees do consider that there are more categories than gender at stake here, creating a more complex situation for Romani women than for other women.

In sum, this section shows how explicit questions on the influence of social categories on IPV against Romani women lead to a 'gender +' response, making additional references to ethnicity and socio-economic status to some extent. When I focused on each category however, it was discovered that even by looking at gender, references to ethnicity appeared in relation to the 'naturalisation of violence', the lack of reporting and the low level of access to services. These responses to the violence by victims, however, cannot be decontextualised: socio-economic reasons and territorial confinement play a very important role in the decision to separate. Although socio-economic aspects were often mentioned by service providers, they did not seem fully aware of the extent of the consequences and how they affect the victims' response. Moreover, the family appeared again as a connector among all categories and as essential in relation to the decision either to break-up or continue to endure the violence. Health and sexual violence are perhaps the two most silent aspects: very few references appeared in the narratives.

[100]Tienen como más dificultades añadidas, por el hecho de pertenecer a este colectivo, pero unas necesidades diferentes, no. Todas las mujeres en esta situación quieren lo mismo. Que les cueste más trabajo es otra cosa.

In the section below, I discuss what the results of these two sections imply for the existing Spanish policy.

6.4.4 Discussion of the Spanish policies on IPV from an intersectional perspective

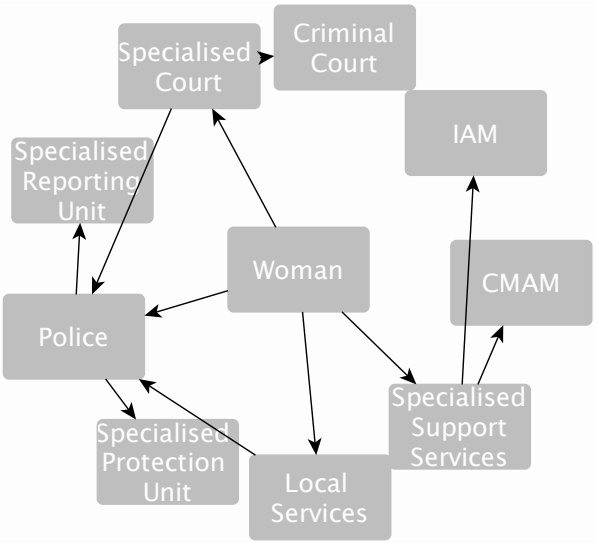
As discussed in the previous sections, gender construction within the Roma community seems to encourage the traditional reproductive and care-giving role of women, yet this gender construction takes place not only within the couple but it extends to the family. Although service providers and Romani women considered that, in light of those traditional gender roles, Romani victims of IPV did not recognise IPV as violence, these victims have shown otherwise. The interaction between ethnicity and socio-economic class, in combination with the neighbourhood, have shown great influence on the type of responses victims can 'afford' to take to the violence. In this section I discuss wether these connections between the social categories examined so far and IPV are taken into consideration by Spanish Policies. In order to answer this question, the first step seems to be to revisit the access to the specialised services for IPV as designed by the Spanish legislator by Romani women.

Formally speaking, women, regardless of their race, ethnicity, religion or class, can access the system of IPV through different paths. Romani women in Almanjayar can do it through the Health Centre or the Centre of Social Services located in the community, or they can access the special services located in the city of Granada directly, where they can get psychological support, legal advice and advice from the social worker. Of course women can also approach the Police directly. The Special Reporting Unit of the National Police (SAF) collects the victims' testimony, grade the risk of the situation and, regardless of the risk, they forward the report to the Special Court on Violence against Women. Nevertheless, women can contact the Special Court directly in order to request a protection order. The Court, however, refers them to the SAF for the filing of the report. Back in Court, victims and perpetrators are separately heard within 48 hours of receiving the complaint, and women may request a protection order (a barring order) valid for two years and file a formal complaint, with the possibility to lead to a criminal trial. In addition, depending on the situation of risk, women are placed in an Emergency Centre for the duration of the trial, and then moved to a shelter in a secret location

outside the province. In any case, if they receives a protection order or there is a final criminal sentence and if women have no income or their income is below the minimum salary, they can apply for the special subsidy (RAI), public housing and gets priority access to training programmes.

There are also public protocols for dealing women victims of IPV. For instance, if women choose to contact the service providers in their community, they are referred to the specialised Centre of the Municipality (CMAM). If there are any physical injuries, the service providers in the community first call the Protection Unit of the Local Police, who takes the women to the Special Reporting Unit of the National Police and forward the complaint to the Court. Then, specialised services are contacted and the process described above is followed. If women live in a town where the municipality has no specialised services, they are referred to the Provincial Institute of the Woman (IAM). There are similar referrals between Health Centres and other agencies, even when no protocol is applied, according to the interviews with professionals. This description of the system suggests that women are placed at the center of to the provision of services, as illustrated in Figure 6.3.

FIGURE 6.3: Access to services



Regardless of the possibilities for direct and indirect access to the services, when I asked the specialised services if they received cases from Romani women, the answers were clear: Romani women access the services very rarely. Yet, estimations are difficult since registration of ethnicity is prohibited in Spain. The criminal judge and the Special prosecutor consequently said that they can never know, just

some intuition based on last names, their place of residence and sometimes, the psycho-social report on the victims. The service provider who had received the most cases was the social worker of the Provincial Institute for the Woman (IAM). This is according to expectations, since there is only one IAM centre per province, coordinating the provision of a crucial service: shelters.

Specialised service providers estimated that Romani women from the district reach out to the provision of services located in the neighbourhood. However, the service providers in the community claimed that only very rarely they receive a request for support for cases of IPV. They reach these women, indirectly, in connection to children's concerns, such as not attending school or situations of neglect. Once they do, the protocol dictates that these women must be referred to the specialised services. This referral, however, is futile, since the great majority of women will not go. The chances that women will attend these Centres located outside the neighbourhood are very low, and this is admitted by the service providers. One of the psychologists located in the community explained:

> When we detect a case where there is IPV, well we refer her to the Municipality Centre, for social resources and psychological support. What happens? Well, there is a lot of resistance here to go out of the area, ok? Having to go, 'go to Granada', like they call it, well, it is a problem.[101]

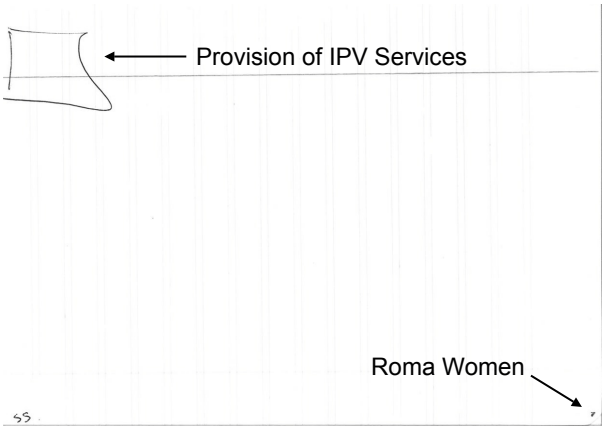
The possible reasons for this reluctance to 'leave' the neighbourhood, as discussed in the previous section, may relate to feeling Granada almost as a foreign place and not as their own, in addition to fears of discrimination and lack of familiarity with the place. Consequently, 'going to Granada', takes much more effort than service providers could imagine given the proximity of the neighbourhood to the city centre. There seems to be an invisible barrier separating these women from the services.

Similarly, one of the representatives of the Roma association drew her own diagram of access to resources, illustrated in Figure 6.4. She explained that women are on one distant corner, and then the provision of specialised services are on the complete opposite corner, unreachable, regardless of any referral protocol. Romani women and the services are in two planes, not connected to each other. She

[101]Cuando detectamos un caso en el que existe violencia pues se hace la derivación allí, tanto para los recursos sociales como para la atencion psicológica. Que pasa? que aquí hay mucha reticencia en desplazarse de esta zona, no? El tema de moverse, de 'ir a Granada', como ellas dicen, pues, es un problema.

considered that, in practice, women have no access to these services, not even to information. Indeed, during the discussions of the information brochures with victims, information was not reaching them. This diagram shows a very different depiction than Figure 6.3 on the formal possibility of women to access specialised services.

FIGURE 6.4: Access to services according to Roma association 2



This distance between the services and Romani women is all the more troublesome since, unlike what many specialised service providers expected, service providers located in the neighbourhood did not have enough resources to deal with the cases. One psychologist located in the community explained that when women do not want to go to the specialised services, she tries to provide psychological support herself, yet she would not be able to focus on these group of women, nor give them any priority given the amount of work she already had. Social workers explained how specialised support measures, regarding housing, employment and training, are only available to the CMAM or IAM. 'Ordinary' social workers have access to 'ordinary' support measures. Furthermore, civil associations did not really take IPV into consideration. Among the associations, one of the representatives said:

> I think I do not know any of the organisations here dealing specifically with IPV. In all the meetings we had, since I am here, at no point have we discussed the problem of IPV, never. [RCA 2][102]

[102]'Yo creo que no conozco ninguna de las organizaciones de aqu que trabaje especficamente con el tema de violencia de género. Y en todas las reuniones que hemos tenido, que, desde que yo estoy aquí eh, en ningún momento se ha tratado el tema de la violencia de género, en ningún momento.'

In addition to the distance separating women from services, as the reader may recall, most service providers considered that ethnicity, although implicitly recognised, has an impact in the access of women to the services. Furthermore, ethnicity has also been considered to have an impact in the socio-economic aspect of the violence, preventing women from responding to the violence as they would prefer. Hence, because ethnicity, socio-economic class and territory are intertwined in practice, analysing access to services without taking these into account is likely to create a gap in the policy.

Nevertheless, ethnicity and any possible issues attached to it (economic and territorial segregation), are not taken into account by the Spanish policy on IPV. In fact, any attention paid to ethnicity is considered as contrary to the principle of equality enshrined in the Spanish Constitution. By adopting a formal equality approach, services are in theory provided *regardless* of ethnicity. This equality paradigm in combination with a 'gendered perspective' is expected to provide protection for all women, Roma and non-Roma alike. Having established a wide range of specialised and comprehensive measures discussed above, the Spanish policies seem in line with international normative requirements as discussed in chapters 3 and 4. Yet, gaps in this system became evident in relation to Romani women when analysed from an intersectional perspective. Some of these gaps are recognised by the service providers and some are not.

The first difficulty seems to lie in the type of reactions that both the legislator and the service providers expect from the women: break-up, report or at the very least, disclose the violence. As discussed in the previous sections, breaking up without socio-economic support is almost impossible given two factors: lack of economic means and territorial segregation. Moving away of the neighbourhood, although desired by many, is virtually impossible without economic means. The support of the family is thus crucial for subsistence, and it will determine the possibility of leaving. In addition, the legal consequences of not having a registered partnership or civil marriage have also economic consequences and impact on the real possibilities for breaking up. The influence of these aspects on the responses of women, although sometimes mentioned by the service providers, was not fully recognised, and women's 'inaction' was very much explained from a culturalised point of view, leading to service providers to perceive the absence of Roma women from the system as 'normal'.

Similar aspects emerged in relation to reporting. Romani women are said not to report the violence, and this is in most cases perceived as the result of women's own responsibility in the matter, or the result of 'Roma culture and gender roles', but not as the consequence of the limitations of the system. Nevertheless, non reporting is far from a trivial issue, since a protection order or a sentence of the criminal judge will facilitate protection and rehabilitation, specially regarding economic resources, greatly needed by Romani women. The judiciary is thus, the gatekeeper of the services. The specialised magistrate expressed that connecting the provision of services to the reporting of the violence also encourages the stigmatisation of victims:

> I think support, economic support like [the special subsidy] or other economic measures, should be disconnected from the formal complaint. These two should not be connected. I understand it is difficult, because then, you say 'to whom do you give the support'?, I do not know, but we have to establish a system that disconnects these two, so we eliminate this perverse discourse in society that women report the violence because of the money. Because nobody, I mean, if someone knew what it means for a woman to report, tell all those things that happened in your life, and think that for 300 euros they do it, well, they truly don't know what IPV is about.[103]

In addition, the central role of the judiciary in the current policy system for IPV may reinforce the already existing reticence of Romani women to report the violence since it brings not only institutional authorities to the matter, but also the possibility for criminal charges on the abuser when asking for a protection order, even if no severe physical violence is reported. As discussed above, regardless of the level of risk detected during the reporting to the police, the police has to forward the files to the prosecutor. A protection order thus, becomes the very last alternative, given the general context of over-policing and stigmatisation that the Roma community suffers.

Another limitation of this 'judicial' approach to all forms of violence (physical, psychological and economic violence) is illustrated by the critique of one of the

[103]Yo creo que deberían desvincularse las ayudas, las ayudas como la RAI o las ayudas económicas por un lado, y por otro lado la denuncia. Que no se vincule una cosa a otra. Entiendo que es difícil, porque claro, entonces dices, 'pero bueno, a qué mujer damos la RAI?', no sé, pero habra que establecer un sistema que desvincule para que no se cree el discurso perverso ese en la sociedad que se denuncia por el dinero, o que se denuncia por la RAI. Porque en todo caso pienso que nadie, osea el que supiera lo que es para una mujer el denunciar, el relatar toda esas cosas de su vida, y piense que eso es por los 300 euros de la RAI, vamos, desconoce totalmente este problema.

specialised police agents. He explained that taking the same approach to psychological violence than to physical violence in the definition of the law often puts women at risk because when a woman reports psychological violence he is not legally capable of arresting the abuser since the risk is graded as low. Yet, the hearing in Court will not take place immediately either. Thus, if the abuser finds out about the reporting and sees this as a provocation by the woman, she is unprotected. Under these circumstances the respondent recognised that he often recommends women not to report.

Another negative aspect of the judicialisation of similar measures was explained by the representative of the Roma Association 1. When the abuser fails to comply with alimony and other economic measures imposed by the judge, women will not communicate this to the Court because such failure constitutes a breach of a judicial order, sanctioned with prison. As a consequence, women are left with no economic support from behalf of the abuser. These unintended consequences of placing the judicial system at the core of the IPV policy seems to enforce the already mentioned 'reticence toward the institutions' among Roma, making access to the system even more difficult.

Romani women, victims and non victims, and the Roma association explain that sometimes there is gap between what women need and desire, and what the policies offer. They suggested that policies on Roma, possibly inspired in the principle of the best interest of the child, focus on the needs of children, specially lack of schooling and neglect, placing women as the main responsible for both, although both issues may be the even the result of situations of IPV. This sensation can be illustrated by the advice given by one of the victims on how to contribute to the elimination of IPV. She said to 'focus on the woman and not so much on the children, and then you will see how these problems go away'. Although taking children as a primary concern is commendable, the call for attention made by this victim highlights the fact that policies on IPV, in theory addressing women do not seem to reach Romani women directly. The best interest of the woman, it seems, it is not always at the core of the policies.

Finally, I will address what I consider to be a crucial gap in the Spanish system: the understanding of gender. As explained throughout this chapters, the definition of gender based violence of the Spanish legislation refers to violence that, as a form of discrimination, inequality and power subjugation of women from men, is inflicted upon women by their partners, ex-partners or who have been in a similar romantic

relationship, even without cohabitation. Thus, although gender is recognised as a 'social issue' it is not truly regarded as a 'social construction' since the scope of the notion is limited to the couple. Violence affecting women in any other area but the couple, even when that is the result of gender discrimination against women, is not considered gender based violence. If the family exerts violence or coercion on a girl to protect her virginity, or coerce her to prevent infidelity, this is not considered as gender based violence. For instance, forced marriages would not constitute gender based violence, nor would female genital mutilation. Arguably, the broadening of this view to incorporate the role of the family and the community in the construction and enforcing of gender mandates is needed in order to design effective prevention policies, not only for Romani women.

In sum, regardless of the comprehensive approach intended in the legislation and policy, providing protection, prevention and the provision of services to victims, as discussed in subsection 6.4.1, when considering the Spanish system on IPV from an intersectional perspective addressing gender, ethnicity and class, several serious gaps are identified. Access is hindered by several aspects found in the intersection of class and ethnicity, two categories which challenge the 'non-discriminatory' and 'equality' approach promoted by Spain. This perspective does not seem to create a situation of equality, but it neglects the specific social situation of some women, certainly Romani women in Almanjayar.

6.5 Chapter Conclusions

The basic question this chapter intended to answer was whether the application of a group-centred intersectional approach, could reveal gaps in legislation and policies on VAW. The answer is positive. Although a first analysis seemed to indicate that the Spanish system was comprehensive and in compliance with the human rights framework on VAW, discussed in chapters 3 and 4, gaps in laws and policies were found already in the design of the instruments. The most important ones seem to derive from the definition of gender based violence used by the Spanish legislation addressing only the sphere of the couple.

In relation to the implementation of the Spanish framework on IPV, the application of the group-centred approach pointed out that a formal equality approach, even when adopting a gender perspective, is not sufficient in terms of providing real

access to services to 'minoritised' women. Access to services could be improved by broadening the analysis to include socio-economic class, ethnicity and territory, besides gender. Furthermore, the central role of the judiciary in the Spanish system of IPV seems to pose additional barriers to Roma, discouraging women from reaching out to institutions.

Additional advantages of deploying the intersectional approach to VAW have been discovered during this empirical experience, all connected with the analysis of the social construction of the gender, class and ethnicity, highlighting the connection between categories, and unveiling new emerging categories.

In relation to the delineation of the social categories of difference within the Roma community, applying an intersectional approach achieved two important results: firstly, redefining what can be considered as 'gender' and redefining what is ethnicity and class by introducing territoriality. Gender was reconstructed in a much more far-reaching and detailed way than suggested in the original policies. It was expanded from the couple to cover the family, and it reclaimed some elements such as marriageability or reproductive and care-giving role which had been placed squarely in the category of ethnicity, not only by the interviewees, but also by the prevailing literature on Roma. In a way thus, this analysis contributed to the de-culturalisation and en-gendering of those aspects, preventing group stigmatisation.

Ethnicity was also reconstructed in a more detailed way. The intersectional perspective contributed to highlight crucial connections between ethnicity and socio-economic class, pointing toward concrete aspects of discrimination. In this interaction among categories, a new category of analysis emerged: the neighbourhood or territorial unity. This category, crucial for the understanding of the situation of Romani women in this study, placed the individual living in that territorial unity in a particular social positioning, creating advantages and disadvantages, similar to a social category of difference. The emergence of the category of neighbourhood created a 'migration-like' series of consequences affecting this women, such as feelings of alienation, lack of social networks and discrimination as a result of 'moving' out of the neighbourhood. In any case, the territory was a crucial signifier of the boundaries of 'others' and 'us', constitutive of race, as discussed in chapter 5.

These findings then lead to another question: does it seem formally possible to incorporate an intersectional approach within Spanish policies? In principle, the

adoption of an intersectional approach to VAW, although not explicitly required by Spanish legislation and policy, should be possible by a comprehensive reading of the applicable policies on IPV and the integration of Roma, making use of an 'applied intersectionality' approach, as suggested in chapter 2. Nevertheless, this possibility seems to be limited by the formal equality approach promoted by Spanish legislation. Legal impossibility to gather statistics or have any sort of registration of ethnic belonging have been established in many countries, but besides this practical impossibility, we can see that public servants, and citizens in general, face a moral conundrum. As commented, service providers seem to feel 'morally uncomfortable' to focus on ethnic minorities or ethnicity as creating differences. This is a very understandable position, possibly preventing ethnic discrimination and stigmatisation, and one that is present in a very considerable number of countries. This study, however, seems in principle to confront cultural readings and prevent stigmatising pre-conceptions.

In addition, incorporating an intersectional approach to violence against women in Spain could require a considerable legislative reform: from principles in the Constitution, to the laws on IPV. Both have been the subject of pride of the Spanish government and its people, the result of social struggles and promoted massively during decades already. Parting with these laws would require a clear view of the advantages to be gained, a clarification of how an intersectional approach differs from the comprehensive approach currently used, and also clear guidance on how to implement such approach. Despite a decade of multiple efforts in the realm of intersectionality, this is not easy and ready available knowledge. Specialised professionals with the proper training and capacity would be crucial for fulfilling these tasks.

Nevertheless, during the interviews service providers were capable of highlighting the interconnection between gender, ethnicity, socio-economic class and other categories by means of the notion of 'challenges'. They explained that Roma, and Romani women in particular, face socio-economic challenges, due to low education and unemployment, which also interconnect with other challenges, including IPV. This 'proto-intersectionality' approach encourages a more comprehensive rather than an atomised view of IPV, separating it into small isolated units. Furthermore, it questions the overly-simplified idea that IPV is universal, affecting all women in the same way. This may represent one step toward a nuanced view of the issues, yet one that will not resemble an intersectional approach if it remains

focused on outcomes (poverty, violence, exclusion, health problems) instead of the processes and social categories leading to those outcomes.

This small case study is a modest illustration of an 'intersectional approach to violence against women' in practice. It does not claim to have representative findings for all Roma women victims of IPV and had no probabilistic goal. Furthermore, having applied a group-focused approach, using a case study approach and qualitative research methods, findings about socio-economic status may be biased by the sample used. The public service providers have access to a particular group of people, those who need the provision of free public welfare services. This also applies to the women, since I contacted them through the Roma associations, providing basic services as well. The socio-economic reality of the interviewed victims may over-emphasise the importance of socio-economic class. Nevertheless, establishing the boundaries of the case by means of recent and up to date regional and national surveys has contributed to a better interpretation of the data, often confirming or explaining many of the statements made by the interviewees, compensating to some extent this possible limitation.

Chapter 7

Case study II: Women victims of IPV in Jujuy

> Places matter. Their rules, their scale, their design include or exclude civil society, pedestrianism, equality, diversity. They map our lives.
>
> Rebecca Solnit, Storming the Gates of Paradise: Landscapes for Politics

7.1 Introduction

The objective of this empirical study is to apply an intersectional approach to Violence Against Women (VAW) in order to identify gaps in legislation and policies on VAW, and indirectly determining advantages and difficulties of including intersectionality within the human rights framework on VAW. Having applied the group-centred approach to VAW in chapter 6, in this case study, I apply an approach inspired by dynamic-centred intersectionality studies described in chapter 2. In doing so, I will focus on women victims of Intimate Partner Violence (IPV) in Jujuy, Argentina.

7.1.1 Justification of the case study

Why Jujuy, Argentina? According to intersectionality theory, gender, race and class can show particular configurations and interconnections in any location, so no special attention in the selection of the place of study seems to be needed. However, the selection of Jujuy in Argentina was inspired by the desire to explore other categories besides gender, race and class, since in the analysis of international norms in chapter 3 and chapter 4, migrant status, rurality and indigenousness were mentioned as factors contributing to the vulnerability of women towards. Selecting a setting where all of these categories combine provides the possibility of a more varied exploration. Jujuy is a place where all these elements can be found in combination. According to the most recent national census in Argentina, Jujuy is the province with highest percentage of indigenous population in the country and, given it geographical location at the national border with Bolivia, it is a place of transit and destination of migrants, particularly those from neighbouring countries. Finally, it possess large extensions of rural areas, making it an ideal place for conducting the study.

In addition, having conducted the first case study in a Member State of the Council of Europe (CoE), the intention for the second case study was to focus on a Member State of the Organization of American States (OAS), party to Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention). Argentina met these requirements, in addition to comprehensive domestic legislation on VAW, making it a suitable choice for the research.

Why IPV? Intimate partner violence is the only type of violence analysed in at the international and regional level in chapters 3 and 4. In addition, laws and policies on violence against women adopted in Argentina pay particular attention to this type of violence.

7.1.2 Research Questions

The research questions of the case studies, drafted in Chapter 5, are refined in relation to this case study this chapter. Indigenousness, migration and rurality

have been added to the predetermined core categories of analysis, gender, race and class. The research questions read:

1. What are the laws and policies applicable to IPV in Jujuy and what do they entail?
2. How are gender, race, class, indigenousness, migration and rurality constructed in Jujuy according to victims of IPV, women of the community, service providers and civil associations' representatives?
3. How are gender, race, class, indigenousness, migration and rurality connected to IPV according to victims of IPV, women of the community, service providers and civil associations' representatives?
4. To what extent do current domestic policies on IPV in Jujuy take into consideration the intersections between gender, race, class, indigenousness, migration and rurality with IPV?

The first question, addressed in subsection 7.3.1, will be answered following examination of the laws and policies applicable to IPV in Jujuy. Question 2, analysed in section 7.3.2, and question 3, analysed subsection 7.3.3, will be examined by means of focus groups with women of the community, interviews with victims of IPV and service providers in Jujuy and my own and my observations during the study. The fourth question, addressed in section 7.3.4, will be answered by comparing the findings regarding the first two research questions with the current policies on IPV in Jujuy.

In the sections below, the aspects of the research design and methods that were not included previously in Chapter 5 are explained, including the procedure to contact the participants, a description of the participants of the study, the structure of the interview and types of questions posed, and the process of data analysis. Then, the results are presented and their implications discussed. Finally, a discussion of the contribution of applying a dynamic-based intersectional approach to cases of IPV and a reflection about the implications conclude the chapter.

7.2 Research Design and Methods

This empirical study follows a qualitative case study methodology with multiple data collection and analysis methods, shaped by context and emergent data.[1]

7.2.1 Data Collection methods

I used similar data collection methods as in the previous case: desk research, semistructured interviews, and participant observation, with one additional element: focus groups.

a Desk research

Legislation and policies applicable to IPV in Jujuy The applicable normative and policy framework, discussed in subsection 7.3.1, was analysed mainly directly from the sources, since contrary to the previous case study, no official comparative studies or implementation studies have been conducted.

Refining the social categories of analysis While the construction of gender and class did not require adjustments, the construction of race needed delineation to fit the Argentinian racial discourse. Villapando et al. explain that although Argentina shows great cultural diversity, including an important number of ethnic, national and cultural groups from different parts of the planet, the national identity was based on the denial of the indigenous and afro-american heritage and the promotion of a christian european identity.[2] 'Otherness' included everyone who did not fit that description, and depending on whether they were considered as assimilable to the national ideal or not, different strategies were adopted, ranging from annihilation to assimilation.[3] The 'unassimilable others' included Indigenous Peoples, Afro-Americans, Jews, Muslims and Roma. Non-european migrants fell under one or the other category depending on their origin. Race, thus, is in this

[1] N. Hyett, A. Kenny, and V. Dickson-Swift. 'Methodology or method? a critical review of qualitative case study reports', (2014) *International Journal of Qualitative Studies on Health and Well-being* 9.

[2] W. Villapando, D. Feierstein, N. Fernández, A. González, H. Ravenna, and M. Sonderéguer *La Discriminación en Argentina* EUDEBA, 2006, 99.

[3] Ibid, 47.

particular context determined by origin (including migration and nationality), ethnicity (including indigenousness) and religion. Consequently, the construction of indigenousness and migration carries this racial imprint.

Defining indigenousness proved a controversial task.[4] Martinez Cobo indicates a number of constitutive elements: occupation of ancestral lands, common ancestry and a specific culture or language. Furthermore, he suggests that indigenous communities 'are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.'[5] Jung, however, argues that 'the condition of an indigenous *political* identity is not the prior existence of an ancient culture or language, nor is it the distinct set of practices that bound group membership. Indigenous identity develops political resonance only to the extent that it is employed by the state itself as a marker of inclusion and exclusion.'[6]

The proposed definition of Martinez Cobo seems severely limited for identifying indigenousness in Argentina due to assimilation policies that, until the constitutional reform in 1994, forced indigenous peoples to abandon their lands and relinquish their language and culture, even in the home, and adopt the Spanish language and catholicism. These policies, implemented through compulsory education and military service, in addition to discriminatory practices, were very effective in discouraging 'the transmission of indigenous values to future generations'. Nevertheless, in a clear direct application of Martinez Cobo's definition, the first Argentinian census focusing on indigenous peoples, carried out in 1966-68, attempted to determine the population by including only persons living in communities, with primary economic activities and pre-hispanic culture (including the language), in a region close to those originally possessed by them.[7] This first attempt confirms the lack of acknowledgment by the State of the institutional

[4]S. D. Warren. How will we recognise each other as Mapuche?: Gender and ethnic identity performances in Argentina. Gender & Society, 23(6):768789, (2009), 769.

[5]Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination Protection of Minorities, Study on the Problem of Discrimination against Indigenous Populations, UN Doc. E/CN.4/Sub.2/1986/Add. 4.

[6]C. Jung. Indigenous is the new Peasant: the struggle for political identity in the neoliberal age. *Social Research* 70(2), (2003), 4.

[7]M. Boleda 'Composición étnica: en torno a los pueblos originarios, in *Poblacion y Bienestar en la Argentina del primero al segundo Centenario*, Susana Torrado (ed), 186. EDHASA, 2007.

process of dispossession and vanishing inflicted on those peoples, as suggested by Villapando et al.[8]

The difficulty in establishing realistic elements for the identification of Indigenous Peoples suggests 'self-identification' as a better determinant of indigenousness belonging, regardless of pre-determined elements, an approach adopted since in 2001 in national census. Nevertheless, self-identification is restricted by the prevalence of discriminatory practices. Villapando et al. explain that different notions have been used to designate indigenous peoples, all articulated in the opposition 'barbarian/civilised', derived from European colonial discourses.[9] Due to their material deprivation, Indigenous Peoples were often characterised as 'lazy', 'criminals', 'liars' or 'ignorants', and later, in combination to trends of internal migration, 'cabecita negra' (black head), due to the dark colour of their hair, their facial characteristics and darker skin.[10] Colour, thus, becomes an important signifier.

Regarding migration, there is a basic distinction based on the origin of the migrant, resulting in the divide of the category. As commented above, European migration, particularly northern European, constituted the basis of the national identity and was formally encouraged in the Constitution. By mid 20th century, a large migrant population from overseas had arrived to Argentina and they were 'assimilated' to the national ideal[11], yet slowly, migration from neighbouring countries started to take over until becoming the majority of population entering the country.[12] Villapando et al explain that the conclusion of the European migratory movements and the increase of migration from neighbouring countries has emphasised the negative consequences of the old ideas of 'european identity' that Argentinian population considers to have, triggering discriminatory practices toward these migrants.[13] 'Migrants' are exclusively those coming from Latin-American or non-European countries, who in the eyes of the national imaginary, have not assimilated to the mainstream. Hence, origin seems to determine 'migration', in addition to elements that could prevent interaction with the 'nationals', such as

[8]Villapando et al. [2006], 104.
[9]Villapando et al. [2006], 101.
[10]Ibid, 103.
[11]F. J. Devoto. La Inmigración de Ultramar in *Poblacion y Bienestar en la Argentina del primero al segundo Centenario*, Susana Torrado (ed). EDHASA, 2007.
[12]R. Benencia. La Inmigración Limítrofe, in *Poblacion y Bienestar en la Argentina del primero al segundo Centenario*, Susana Torrado (ed), 577. EDHASA, 2007.
[13]Villapando et al. [2006], 139.

cultural differentiation (language, clothing and celebrations), aspects related to settlement and the type of activities they perform.[14]

Nevertheless, Benencia highlights that areas close to the national border 'continue to have an own life, where cultural diversity can be found'. He argues that these areas function both as 'exchange settings' (persons and goods) and also as 'ethnic settlements', with a differentiated identity than the rest of the territory.[15] For instance, he suggests there is a 'virtual border' between Argentina and Bolivia in Jujuy, where 'migration' basically disappears.

Finally, regarding the category of 'rurality', Reboratti recalls the multiple meanings of the term and underlying notions, such as agriculture, nature, isolation, low population density, limited communication and a tendency toward traditional views. He points a few specific characteristics of rurality in Argentina, such as the merging of the category of rurality with indigenousness, being sometimes difficult to distinguish the two, and a severe increase in rural unemployment in Jujuy, due to discontinuing the production of certain crops, the closing down of sugar cane mills, the incorporation of Bolivian farmers and the improvement in cargo transportation, leading to internal migration.[16]

Nevertheless, many of those aspects may become less important with the introduction of different technologies, modifying the implications associated to rurality. Hart et al. suggest that configurations of rurality require to 'to specify which aspects of rurality are most relevant to the topic at hand and then select an appropriate definition'.[17] They propose constructing a taxonomy based on population density, degree of urbanisation, proximity to a metropolitan area and principal economic activity. For the current study, an additional relevant aspect is the availability of services for victims of IPV. Taking these elements into account, three possible types of rurality may be distinguished: extreme rural, rural and intermediate rural.

Considering the content of these social categories, illustrated in Table 7.1, the questions for guiding the interviews were drafted.

[14]Benencia [2007].

[15]Benencia [2007], 579.

[16]C. Reboratti. Los Mundos Rurales in *Poblacion y Bienestar en la Argentina del primero al segundo Centenario*, Susana Torrado (ed), 85, 93-103. EDHASA, 2007.

[17]L. G. Hart, E. H. Larson, and D. M. Lishner. Critical concepts for reaching populations at risk. *American Journal of Public Health* 95(7), 2005, 1149.

Core categories	Aspects derived from general literature	Aspects derived from literature on Argentina
Gender	Sexuality: sexual orientation Reproductive role of women Body representations Position within the family Types of Jobs Public participation	No additions
Race	Notions of common origin and destiny Body representations Religious codes Cultural codes	Indigenousness and blackness Non-Christian Non-European migrants.
Class	Education, Employment Standard of living Social networks	No additions
Indigenousness	Occupation of ancestral lands, Common ancestry Specific culture or language Transmission of cultural values	Self identification Colour
Migration		National origin Cultural Differentiation Settlement Economic Activities
Rurality	Population density Degree of urbanisation Proximity to a metropolitan area Principal economic activity Availability of services for victims of IPV	Indigenousness Unemployment Isolation Internal Migration

Table 7.1: Redefined core categories of analysis

b Participant observation

I stayed in Jujuy during September and October 2012. In order to capture the potential diversity of experiences of IPV, I focused my research in different regions within the province. The province is normally divided into four different geographical regions: Puna, Hills (Quebrada), Valleys and Yungas. In the area of Yungas I conducted all interviews in San Pedro. In the area of the Valley, I focused on two different locations: the city of San Salvador de Jujuy, the province's capital city, and Alto Comedero, a large suburban neighbourhood stretching from the city of San Salvador and the municipality of Palpalá. For practical reasons, I conflated 'Quebrada' and 'Puna' into one area 'North', because both present

similar lifestyle and customs. Regarding North, I focused on the area between Huamahuaca and La Quiaca, near the border between Argentina and Bolivia. In all of these areas, I observed therapy group discussions with victims of IPV. These discussions revealed some common difficulties affecting victims of IPV, such as housing and child care responsibilities. In addition, these observations allowed me to incorporate the terminology of the place, facilitating the communication during the interviews.

During my stay in Jujuy, two trainings on domestic violence and reproductive rights were offered by the government of the province, with the support of the national government for different actors, such as local government representatives, civil associations and other practitioners. During those meetings I could observe the interaction between the participants and take note of their comments. This observation was useful to understand the social perception of gender based violence and gender.

c Focus Groups

Focus groups with women from the community, including victims and non-victims, were planned in all four areas under study, yet this was not possible because of logistics and the impossibility to achieve institutional support within the time frame of the case study. Only two focus groups were conducted, both in Alto Comedero. These focus groups were possible by the coordination of a local religious organisation, running a school for training and capacitation of adult women. The first focus group took place in this setting, with the participation of 12 women, ages between 30 and 45 years old. The second focus group was held with a group of women who were interested in the topic and were launching a 'gender group' within their political organisation, a very active one in relation community issues. In fact, the community was established by and revolved around this political organisation. This was a group of 6 women, between 25 and 35 years old.

The main topics of discussion, included in Appendix C, were the occurrence of IPV in the community and the public response to the issue. Also, I asked them about their perceptions about the connection between IPV and gender, race, class, indigenousness, migrant status, rurality or any other category. In addition, I asked them whether any factors should be taken into account in public responses to IPV. Both focus groups took approximately 1.5 hours.

The sessions intended to discover the perceptions of the group as a whole, trying to establish areas of agreement and disagreement within it. These areas were identified in both groups, suggesting that the participants felt comfortable with the groups' dynamics and able to establish a common ground while also expressing their own views. In addition, the general position of both groups sometimes coincided, and sometimes were opposing. Individual accounts were also shared at times, often those of self-identified victims of domestic violence, yet these were firstly addressed as 'individual experiences' by the group, and only in some cases echoed and accepted as the common ground. In both cases, participants closed the session expressing what a 'positive experience' it had been.

d Interviews

Qualitative face-to-face semi-structured interviews were conducted by me and an assistant with all respondents.[18] My assistant had previous interviewing experience and training in anthropology studies. I instructed her for this particular study by discussing the aim of the interviews, conducting pilot interviews in her presence, and by observing her conducting pilot interviews and giving her feedback. We both followed the same interview protocol. In addition, I conducted focus group discussions to gather general perceptions about domestic violence within the community. Interviews and focus groups were held in Spanish, took one hour on average and were tape recorded. All participants were informed about the purpose of the study and signed an informed consent form.

Some enabling and projective techniques were used in the interviews in order to capture the participants views on violence and intersectionality. All participants were prompted with two statements regarding violence against women and were asked their opinion about it. In addition, service providers were asked to draw a diagram explaining the trajectory that victims of IPV had to follow in order to get support. These diagrams have been used to triangulate the information from the interviews and the desk research about the existing policy on IPV discussed further below.

[18]From the total of forty-eight interviews included in this case, four were conducted by my assistant and the rest were conducted personally by me.

Participants A total of forty-eight interviews were included in this case study. Fifteen victims of domestic violence were interviewed, five per location, as illustrated in Table 7.2. The majority of women (10/15) were separated from the abuser, while two were in the process of separating, and only three remained with the abuser. All but two victims had reported the violence, and eight of them had protection orders granted. Only one case was prosecuted, resulting in jail of the perpetrator.

Victim	**Age**	**Age/ married**	**Child**	**Age/ child**	**Union**	**Indi-genous**	**Natio-nality**	**Reported**	**Place**
1	30-39	30-35	Yes	N/K	Married	No	Arg.	Yes	S. Pedro
2	30-39	N/K	No	N/A	Married	No	Arg.	Yes	S. Pedro
3	30-39	20-25	Yes	15-20	Married	No	Arg.	Yes	Alto C.
4	40-49	20-25	Yes	20-25	Married	No	Arg.	No	Alto C.
5	50-59	15-20	Yes	15-20	De Facto	No	Arg.	Yes	North
6	30-39	15-20	Yes	15-20	Married	No	Arg.	Yes	S. Salvador
7	30-39	20-25	No	N/A	Married	Yes	Bolivia	Yes	S. Salvador
8	40-49	15-20	Yes	15-20	De Facto	No	Arg.	Yes	S. Salvador
9	40-49	15-20	Yes	15-20	N/K	No	Arg.	Yes	S. Pedro
10	30-30	N/K	No	N/A	N/K	No	Arg.	No	S. Pedro
11	40-49	15-20	Yes	15-20	De Facto	No	Arg.	Yes	S. Pedro
12	30-39	15-20	Yes	15-20	De Facto	Yes	Arg.	Yes	North
13	30-39	15-20	Yes	15-20	De Facto	No	Bolivia	Yes	North
14	30-39	15-20	Yes	N/K	De Facto	No	Arg.	Yes	North
15	30-39	15-20	Yes	15-20	De Facto	No	Arg.	Yes	North

Table 7.2: Profile Victims

In addition, twenty-nine interviews were held with service providers from all locations under study. Police officers were interviewed in six police stations across all areas under study. When possible, police stations were selected in order to cover urban and suburban areas. In the capital city, the central police station was selected, where most cases of domestic violence were referred to from other services, and one police station located at the periphery, formally assigned as the 'Police for the Woman', where nevertheless, there was no specialisation on VAW. Similarly, in San Pedro, two police stations, one urban and one suburban were included. These two police stations commonly dealt with different type of crimes and the characteristic of the victims and perpetrators also differed among them. In the suburbs of the capital city, Alto Comedero, police stations are assigned per district, so I selected the police station corresponding to the majority of interviews with victims. In North, interviews were conducted in the existing police station. In all police stations except one, I interviewed the chief and/or second chief in command. None of the police stations, central station included, had a special unit

or specially trained officers for dealing with domestic violence. All but one of the interviewed officers were male, and all of them were Argentinians.

Furthermore, seven members from the judiciary were interviewed. There are two judicial jurisdictions in Jujuy, each with its own Courts, Public Prosecution Office and Public Representation Office. The main judicial jurisdiction is based in San Salvador, covering from La Quiaca to Perico. In this jurisdiction I interviewed the Head of the Public Representation office based in San Salvador, and a public legal representative located in the North, both of them Argentinian women. Unfortunately, the Public representation delegation in the suburban area of Alto Comedero was not active during this study. In addition, a public prosecutor in San Salvador and two auxiliaries to the prosecutor located in Alto Comedero and North were interviewed, all three of them male. Finally, service providers in the Victims Support Office (OFAVI), auxiliary to the judiciary, were interviewed, both of them male. Unfortunately, judges did not agree to be interviewed. The second judicial jurisdiction, covering San Pedro and Ledesma, was not included in the sample due to lack of authorisation.

Three legal counsellors providing legal representation free of charge to victims of domestic violence were also interviewed for the study. Two of these attorneys offered their services in connection to local NGOs promoting women's rights, one located in San Salvador and one in Alto Comedero. The third legal counsellor was providing legal representation in relation to protection orders, as part of the services for victims of domestic violence of the Municipality Program for Violence. Two of these councillors were women, and one man.

Seven social workers were included in the sample. One of these professionals was assigned to the Civil Courts in San Pedro, while two of them were in charge of the Programme for Family Violence in the Municipality of San Salvador. In addition, two social workers were working at the Centres of Support for Childhood Adolescence and Family (CAINAF) in Alto Comedero, and the final two were interviewed in North, one of them assigned to one Centre for Community Integration (CIC) and one to a hospital.

Regarding psychologists, 7 interviews were conducted. Two of these psychologists were assigned to the Centres of Support for Family Violence (CAIVIF), one in Alto Comedero and one in San Salvador, one was engaged in the Programme for Family Violence in the Municipality of San Salvador. These three were the

only participants formally dedicated to IPV. In addition, I interviewed one of the psychologists at CAINAF Alto Comedero, in charge of performing assessment of family situations at the request of the Courts. In North, the interviewed psychologist was deployed in a CIC, where she conducted the only therapy group on IPV in the area. Finally, one psychologist working for the Victim Support Office (OFAVI) and one psychologist in charge of a therapy group on IPV in San Salvador were interviewed as well. No psychologists were interviewed in San Pedro.

Non-governmental organisations were contacted in all four locations under study, all incidentally and informally providing services for victims. One of the contacted ONGs, located in Alto Comedero was a religious organisation formally dedicated to providing training for women. Similarly, one organisation contacted in North was connected to the local church. This organisation was formally in charge of helping migrants, specially in relation to legal documents and other issues. I interviewed the coordinators, who were both women, one Argentinian national and one Bolivian national, and one of which was a nun. In addition, four civil associations were contacted, one in each location. One of these civil associations had a close connection to a left wing political movement, the other three were politically neutral. I interviewed one representatives in each of them. All civil associations put me in contact with victims who agreed to participate in the study.

Interview Procedure Different strategies were adopted in order to contact the participants. Victims in San Salvador were contacted through the dedicated programme of the Municipality and the Non-Governmental Organisation (NGO) providing legal representation. In Alto Comedero, victims were contacted through NGOs and by a training institution dependent of a religious school. Victims in San Pedro were contacted through the NGO providing services for victims of gender based violence, and two victims were interviewed after casual encounters, one of them in a police station where I was conducting interviews with police agents. Victims in La Quiaca were contacted through one local NGO and through service providers.

Regarding the two dedicated programmes on domestic violence, I approached the coordinators in person, explained my study and asked them to participate. They both agreed to an interview. The service providers from the Provincial and the Municipality Programmes for domestic violence were interviewed only after the

programme coordinator had been interviewed. The coordinator of the municipality programme arranged the interviews with the staff. The coordinator of the provincial programme provided the contact details of the service providers for CAIVIF, located in hospitals and health centres in San Salvador, Alto Comedero and Northe. In addition, he introduced me to the Victim Support Office (OFAVI). They, in turn, contacted me with one therapy group organised in one of the city hospitals. Finally, the professionals of the Support Centres for Childhood, Adolescence and the Family (CAINAF) in all three locations under review were contacted as well.

Local NGOs providing services to victims of NGOs were approached directly, after locating them in an information folder. I also approached the director of the Public Representation Office directly, and obtained formal authorisation to conduct the interviews. She contacted me with public representatives, prosecutors and auxiliary of the prosecutors in all locations within her jurisdiction.

Finally, police officers in all locations were approached directly. They were the easiest participants to recruit, agreeing to be interviewed immediately. No formal authorisation was required, except for interviewing in the Central Police Station, were a formal request in addition to a copy of the interview protocol was necessary.

Interview structure Two interview protocols were designed based on the type of participants: one for victims and one for service providers. The interview protocol for victims focused on their experiences of violence, their needs and the responses found, and their perceptions around IPV in general. The interview protocol with service providers focused on their experience with victims of IPV, and their perceptions on the violence.

The first part of the interview with victims focused on some personal details. Participants were asked their age, how long were they married, what type of union they had and how many children they had. Along the interview, victims were asked about their education level and employment condition. I also asked them about their daily concerns and difficulties. These answers were used to help positioning the victims within the social fabric. Service providers were not asked any demographic data. Instead, they were asked their role in the organisation, how they entered into contact with victims and to provide a basic description of the victims' personal characteristics based on their professional experience. They

were asked whether they considered that victims had any other difficulties beside violence-related problems. Finally, they were questioned about their feelings of satisfaction and frustration with the job. This allowed the participants to relax, and provided them with a connection point in subsequent questions about the functioning of the policies.

In the second part of the interview, victims were asked about their experience with violence, allowing them to describe violent episodes in detail. They were asked about the consequences of violence they had to endure, and whether they felt safe in the present time. They were also asked whether they had disclosed the violence to anybody at anytime, and whether they had reported the violence to the police. Finally, victims were asked whether they had tried to access any type of services and what their experiences were in this regard. Service providers were asked about their experiences with victims, the types of violence women contacted them about and what they considered were victims' needs and expectations. They were asked to draw a diagram with all existing resources available for victims of IPV, asking them about the accomplishments and failures of the system.

The third part of the interview addressed the perceptions of violence of victims and service providers. Participants were given two statements to read, and asked their opinion about them. Statement A read:

> Violence against Women is universal; it affects all social sectors, cultures and races.[19]

This statement intended to help respondents in explaining common aspects among victims, and also triggered references to differences among them.

The second statement was used in order to trigger opinions about intersectionality and the importance of social categories in relation to the violence. It read:

> The forms of violence to which women are subjected and the ways in which they experience this violence are often shaped by the intersection of gender with other factors such as race, ethnicity, class, age, sexual orientation, disability, nationality, legal status, religion and culture.[20]

[19] In-depth study on all forms of violence against women, Report of the Secretary-General, A/61/122/Add.1, para 366.

[20] Ibidem

All participants were also asked whether they considered that, based on their experiences or needs, women victims of IPV constituted a homogeneous group. I also asked participants the following questions:

- Do you think that all victims of IPV have equal experiences and needs?
- To what extent do you think that victims of IPV belonging to minorities or who are in disadvantaged positions (economic, social, etc.) have different experiences and needs than women who do not? Do you think they suffer IPV disproportionally?
- Do you reckon any characteristics among IPV victims which allow for differentiation among them?
- In relation to IPV, what are the consequences of the intersection of these factors?
- What factors/categories do you consider that must be taken into account by policies on IPV?

I took this opportunity to ask victims whether any of those factors/categories applied to their personal situation.

Finally, service providers were asked what rights are violated by IPV, what they consider were the State's obligations regarding IPV, and what they thought was the appropriate role for NGOs. They were also asked whether they ever made use of or somehow referred to the international normative framework on VAW.

7.2.2 Data Analysis

Data was analysed using a theoretical thematic analysis approach[21], with a codebook developed a priori. The data analysis followed the six phase method suggested by Braun & Clark (2006), adapted to thematic analysis with a codebook developed a priori. In this section, only variations and specifications are discussed.

The first phase related to the transcription of the interviews. In the second phase, the codebook was elaborated according to the predetermined core categories of analysis, as described in Table 7.1. Top-level and subsequent child nodes included in the codebook can be found in Appendix D. Core categories, gender, race,

[21]Boyatzis, Richard E. 1998. *Transforming qualitative information: thematic analysis and code development* Thousand Oaks, CA: Sage Publications.

class, indigenousness, migration and rurality, were translated into main codes categories, (top-level nodes), each of them containing their constitutive elements, (child codes), based on the general literature discussed in Chapter 5 and the literature specific for this case study, discussed in section 7.2. In addition, top-level nodes were created for coding references to policies and for intersectionality-related references.

Regarding the reliability of the codes in the third stage, they were tested by comparing my coding results to those of a student assistant, in this case in relation to the focus groups with women. The results were compared, and since we both coded consistently I made no modifications to the codebook. This comparison between my coding and the student's contributed to the identify the majority and minority views expressed during the focus groups.

During the fourth phase, I read and coded the interviews sequentially, dividing them by sets. I started with the focus groups, then I continued with victims. Then the interviews to the police, prosecutor, public representatives and legal counsellors followed. Then, I focused on the psychologists and social workers. In the case of psychologists and social workers, I separated them into four sub-sets according to location. Finally, I focused on the interviews with the representatives of the associations, first the civil ones and then the religious.

I then moved to the identification, integration, renaming and separation of themes. Four overarching themes seemed to capture the most important aspects regarding IPV in Jujuy, as described in the raw data: gender roles, socio-economic class, protection and resources. The themes and the connected story were named and defined, and then the connection of each theme with the research questions was analysed, completing the sixth phase of the analysis. Quotations were incorporated in Spanish first, and then translated to English.

Just like in the previous case study, data was triangulated by comparing the interviews, the diagrams drawn by participants and my observations. Triangulation was made per topic or theme, including observation, interviews and diagrams of each participant were compared in order to spot coherence and contradictions. Table 7.3 shows an example of triangulated data, in this particular case, in relation to the role of the police.

Role of the Police		
Source 1	Source 2	Source 3
Interviews	Diagrams	Observation
Prosecutors explain that criminalisation is possible only by the formal complaint of the victim, taken by the police. In many cases, prosecutors do not have any contact with victims. Public Representatives explain that the formal complaint at the Police is required for providing their services, in addition to the special form devised by the Office. Police agents expressed that in a case of violence, women call the police station as first option.	The majority of service providers list the police as the first available 'service' for victims of IPV.	In all locations, police stations seem to be the nearest option for victims of IPV, even in relation to health centres. This is the case in all locations, including San Salvador.
Interpretation		
Regardless of the letter of the law, the implementation of the policies have turned the police in the entry point to the system of protection, even when protection orders are civil measures. Besides this policy configuration, the material proximity of police stations may lead women to access police rather than other more distant located services.		

Table 7.3: Data Triangulation Chart

The next section delineates the boundaries of the case, describing the most relevant aspects that contribute to the social configuration of Jujuy and the general social situation of women.

7.3 Results and Discussion

7.3.1 Current policies applicable to IPV in Jujuy

In this section, the first research question, 'what are the laws and policies applicable to IPV in Jujuy and what do they entail?' is addressed. The analysis included national and provincial legislation on VAW, enumerated in Appendix B.

Since Argentina adopted a federal form, the normative system consists of three levels: national laws, provincial laws and municipal regulations. Provinces hold the power to legislate, except in specific areas where national law prevails. The first and foremost normative backbone at national level is the Constitution, granting fundamental rights and freedoms, and establishing the basic legal and political

structure. According to article 75, paragraph 22 of the National Constitution, all main international Human Rights Treaties are part of domestic legislation and have constitutional hierarchy.[22] In addition, Argentina has ratified the CEDAW and the Belem do Para Convention[23], adopting them as national laws with constitutional hierarchy. Their binding nature and immediate application have been further confirmed by law 26.485. As a consequence, laws passed in the country must be congruent to international human rights treaties, since all national (and provincial) legislation must abide by constitutional principles.

In addition to the domestic application of international treaties, Argentina has adopted two main national laws applicable to violence against women. Law 24.417 on the Protection against Family Violence[24] was adopted following the signature of the Belem do Para Convention. Without providing a definition of family violence, the main purpose of this law is to allow the judge to issue protection measures for the protection of every person who suffers injuries or any psychological or physical mistreatment at the hands of family members. These measures include barring the abuser from the home, the prohibition to contact the victim at the workplace or place of study and deciding on alimony and a visiting regime in relation to underage children.

The protection provided by law 24.417 is articulated by the family judge, following a report of violence. The reporting procedure established in this law does not require any legal formality nor legal representation, and it established mandatory reporting for health professionals and other service providers in relation to the victimisation of minors, elderly and disabled persons. In order to issue these protective measures, the judge will require a professional multidisciplinary assessment of the psychological and physical harm of the victim, the level of risk of the situation and the social situation of the family and family environment. Based on this assessment, the judge could impose additional 'therapeutic' (psychological) and educational measures, helping to prevent violence, as well. In addition, psychological support is expected to be provided free of charge, broadening slightly the 'protective' character of the law to include the provision of services.

[22]Constitution of the Argentine Nation. Law N 24.430, passed in December 15, 1994 and sanctioned in January 3, 1995. Available at: `http://www.biblioteca.jus.gov.ar/Argentina-Constitution.pdf` [Last accessed on December 11, 2014.]

[23]Argentina signed the Inter-American Convention in order to Prevent, Sanction, and Eradicate Violence against Women on October 6th 1994, and ratified the instrument on 4 September 1996 by Law 24.632.

[24]Law 24.417, adopted in 1994 and regulated by Decree 235/96.

As commented, the federal system in Argentina dictates that special laws adopted at national level will prevail over provincial ones, yet provincial laws can expand the national law imprint. Consequently, national law 24.417 encouraged the adoption of similar laws addressing 'family violence' at provincial level, and accordingly, Jujuy adopted in 1998 law 5.107 on the 'Comprehensive Support for Family Violence',[25] and its regulatory decree 2.965-2001. The provincial law can be considered as more comprehensive than the national law in several aspects. Firstly, it provides a definition of family violence:

> Psychological or physical mistreatment or the violation of the rights of a person, whether this is a minor or an adult, including sexual abuse, by family members connected by blood, legal or de facto relations, even with no cohabitation, and by the legal guardians against their protégées. (My translation)[26]

Mirroring the national law, law 5.107 introduced the same type of precautionary measures for family violence within the province, with the additional sanction of their breach. In such cases, the judge can compel the abuser to follow different programmes (psychological support or education) or do community service. The procedure to establish those precautionary measures also replicate the national law on Family Violence. It adopts the principle of informal reporting of the violence, with no need for legal representation, and it confirms the legal competence of the family judge. Regardless of this, the Public Representation Office is mandated to provide legal representation free of charge.[27] In addition, the provincial law established the duty of health professionals and service providers to report family violence against minors, elders or disabled people, which must take place within 72 hours by means of a specific form and under the risk of criminal sanctions in case of non-compliance.

In addition to protection measures, provincial law 5.107 established several measures related to the provision of services, the prevention of the violence and promotion of prevention measures. It introduced the Provincial Commission for Support

[25]Provincial Law 5.107, adopted on 22 December 1998, implemented and regulated by Decree 2.965/2001, March 5th, 2001.

[26]The original definition in Spanish reads: 'Se entenderá por acto de violencia familiar todo maltrato a la salud física o psíquica o la violación de los derechos de las personas, sean éstas menores o mayores de edad, incluyendo los actos de abuso sexual, por parte de integrantes de su grupo familiar, ligados por lazos de consanguinidad, de afinidad o por simple relaciones de hecho, aún cuando no cohabiten bajo un mismo techo, como también los actos descriptos ejercidos por los tutores o curadores respecto de sus pupilos.'

[27]In Spanish: Defensoría de Pobres y Ausentes.

to Family Violence[28], charged with the task of planning and implementation of preventative and protective policies on family violence, in coordination with the judiciary. This Commission was intended as incorporating representatives of public entities and NGOs dedicated to family violence, yet it has not been established to date. In addition, the law introduced the Centres of Support for Family Violence[29], which form a network, located in hospitals and health centres, providing support and prevention of violence, staffed by professionals specialised in family violence, providing advice, psychological support and social support. In practice, each delegation is formed by a medical doctor, a psychologist and a social worker, yet in most cases these professionals do not have exclusive dedication. Furthermore, the law stipulates the obligation to provide emergency shelter for a maximum of 72 hours, through the system of public housing. This is a timely measure, considering that to date, there are no public emergency shelter for victims of IPV in Jujuy.

This provincial law also established that Police Stations must have specialised trained personnel to deal with cases of family violence and within 24 hours forward the case to the tribunals. They must also provide information to the victims, and if there is a suspicion of the perpetration of a crime of public prosecution, they must notify the criminal judge to start proceedings ex-officio.

The second national law applicable to violence against women is law 26.485[30], aiming at the prevention, protection and the provision of services for women victims of violence, including shelters and legal representation. It emphasises education, awareness raising, and training of professionals. For this purpose, the law established an over-sighting body, the National Council for Women.[31] The law defines violence against women as:

> Any behaviour based on an unequal relationship that, either directly or indirectly, affects the life, freedom, dignity, the physical, psychological, sexual or economic integrity or the personal safety of women, by means of a positive or negative act, taking place in the private or public sphere. [My translation][32]

The law specifies what is to be considered as physical, psychological, sexual, economic, symbolic and indirect violence. Furthermore, it clarifies that violence

[28]In Spanish: Comisión Provincial para la Atención Integral de la Violencia Familiar.
[29]In Spanish: Centros de Atención Integral de la Violencia Familiar (CAIVIF).
[30]Ley 26.485 de Protección Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en los Ámbitos en que Desarrollen sus Relaciones Interpersonales, April 1st, 2009.
[31]In Spanish: Consejo Nacional de las Mujeres.
[32]Law 26.485, article 4.

against women may take different forms, and enumerates domestic violence, institutional violence, labor violence, violence against reproductive freedom, obstetric violence and media violence as specific forms. From these types of violence, the definition of domestic violence is of interest for this study:

> Domestic violence is violence directed against women by a family member, affecting their dignity, well-being, physical, psychological, sexual and economic integrity, their freedom, including their reproductive freedom, and the right to their full personal development, regardless of where it takes place. 'Family' means any relation derived from blood, marriage, de facto unions, and partnership or dating. It includes present and former relationships, not requiring cohabitation. [My translation][33]

This definition expands that from provincial law 5.107, explicitly incorporating new elements such as economic integrity, freedom, reproductive freedom and the right to personal development and should prevail over the one included in law 5.107.

Furthermore, although it lacks a specific offence of domestic violence, the Criminal Code can be applied to the punishment of domestic violence through its general provisions. The criminal provisions potentially used in these cases are those dedicated to murder[34], injuries,[35] sexual abuse,[36] threats,[37] deprivation of freedom[38] and harm.[39] These criminal offences should, in principle, be interpreted according to the international human rights principles that Argentina has agreed to. In relation to IPV, injuries are probably the type of crime that would most likely be of use. There are three types of injuries in the Criminal Code, minor injuries, serious injuries and severe injuries. Their constitutive elements are illustrated in Table 7.4.

The difference between these types of injuries has potential implications for cases of IPV since the initiation of the investigation and prosecution of these crimes varies. For instance, while murder, severe injuries, deprivation of physical freedom and threats are ex-officio crimes, minor injuries and sexual abuse require the formal complaint of the victim.

[33]Law 26.485, article 6 a.
[34]Argentinian Criminal Code, Law 11.179 (1984), article 90.
[35]Ibid, articles 89-92.
[36]Ibid, articles 119 and 120.
[37]Ibid, article 149 bis.
[38]Ibid, article 142.
[39]Ibid, 183.

Severe Injuries	**Serious Injuries**	**Minor Injuries**
Incurable mental or corporal incurable disease	Permanent debilitation of the health, a sense, an organ or limb	Any other type of injury
Permanent incapacitation for work	Permanent difficulty of the use of words	
Loss of a sense, an organ or limb	Put the life of the victim at risk	
Loss of the use of a limb or the word	Incapacitation to work for a month	
Loss of the capacity to reproduce or conceive	Permanent disfiguration of the face	
3 - 10 years of prison	1- 6 years of prison	1 month- 1year of prison

TABLE 7.4: Type of criminal injuries

In addition to the possibility of criminalisation, In the province of Jujuy, the Victim Support Office, auxiliary to the Public Prosecution Office, offers the possibility for mediation in cases of minor injuries, sexual abuse and family violence, providing victims with an alternative to criminal prosecution for these crimes. These possibility, however, seems to be at odds with international norms that call for prosecution of cases of gender based violence.

There are a number of constitutional norms preventing discrimination and calling for specific protection of minorities. For instance, the National Constitution encourages the adoption of laws and positive measures that ensure equal opportunities and full enjoyment of rights, specially for children, women, the elderly and disabled persons.[40] Since 1994, it acknowledges the ethnical and cultural preexistence of indigenous peoples, and warrants respect for their identity, the right to bilingüal and inter-cultural education, the protection of their lands and their participation in the administration of natural resources.[41] Finally, it establishes the principles of equality before the law[42], and gender equality in relation to public office and political participation.[43]

In sum, the criminalisation of violence is regulated at national level, while the protection of women from violence and the provision of services is regulated by a combination of national and provincial laws. Protection is carried out mainly in the civil and policy realm, while the services established by law are provided by public institutions and by civil organisations, including religious ones. The

[40] Argentinian Constitution, article 37.
[41] Ibid, article 75, 17.
[42] Ibid, article 16
[43] Ibid, article 37.

equal access to these entitlements is constitutionally warranted, enabling legal remedies to protect them. In the next section, the empirical examination of the implementation of the system is discussed.

7.3.2 The social construction of the predetermined categories of analysis.

In this section I examine how gender, race, class, indigenousness, migrant status and rurality are constructed in Jujuy according to the focus groups with community women and interviews with victims of IPV, service providers and civil associations' representatives, in order to answer the second research question of the study.

Perceptions of gender I will start by discussing the references to gender as a ground of discrimination and inequality. Gender discrimination was pointed out in interviews with victims and service providers, including interviewed men. Victims testimonies referred to gender inequality in Jujuy as exceeding the scope of the couple, as illustrated by this quote:

> But here, people are generally sexist, that's the first thing you need to realise. A police man, anybody, any man in front of any institution looks down on you because you are a woman. And I think this is what happens too often at provincial government level, in all institutions. [Victim 5, North][44]

Nevertheless, while some service providers made similar remarks, other service providers, particularly police, seem to suggest a distinction between different social sectors. They implied that gender inequality was not really representative of all society in Jujuy, but it was more common in the North of the province due to strict gender roles and traditional customs. One of the Public Legal Representatives, for instance, argued that 'patriarchy' is strongest 'in the north', meaning the north of the province. This view is also clear in this police officer's testimony:

[44]Pero aquí generalmente son muy machistas, es lo principal que tenés que tener en cuenta. Un policía, cualquier persona, cualquier hombre que esté al frente de cualquier institución, te hace de menos porque sos mujer. Y para mí me parece es lo que pasa demasiado a nivel de la gobernación, a nivel de todas las instituciones.

> Here, the one giving orders and mandating at home apparently has to be the man, and the woman has to be cooking, taking care of the kids and nothing else. So unless that ideology changes, the culture that people have here, this will continue to occur. [Police 6, North][45]

This view was mitigated to some extent by the prosecutors, who emphasised gender discrimination as something deeply rooted in Jujuy in general, although connected to the indigenous background of the province. Nevertheless, male jurists generally pointed out that men in Argentina, and not only in Jujuy, are machista. The uncomfortable feeling of having a female boss was given as example of the sexism of society.

Regarding the social construction of the category of gender in Jujuy, participants made generally few explicit references to 'gender' as such, so it is mostly defined in this study by references to other aspects that point to gender construction, particularly through references to gender roles and the relation with children. Virginity, crucial in the previous case study, was not mentioned as an aspect important to womanhood in Jujuy. Only one victim explicitly mentioned by virginity, in connection with traditional religious views, yet not as a commonly shared social norm. In fact, several victims had children out of the wedlock or from different partners, what did not appear to affect the 'family honour' or their 'marriageability', that is, the prospective of finding a partner.

Yet, three female service providers explained that there was a social pressure to get married, or at least be in a relationship. They had felt this pressure personally, being young women and professionals, experiencing the contrast between their personal choices and the social norm mandating a relationship and having children. This social pressure to be with a man, however, seems to be transformed into an economical pressure for women of lower sectors, as I will discuss below in relation to class.

References to traditional gender roles are similar and consistent throughout the interviews, yet particularly highlighted by victims and in the focus groups with community women. On the one hand, men are expected to provide means to the household, particularly money. Women, on the other hand, seem expected to take care of the house and the children, even if they work outside the home.

[45] Acá el que tiene que ordenar y mandar en la casa aparentemente tiene que ser el hombre y la mujer tiene que estar cocinando, cuidando a los chicos y nada más. Entonces hasta que no cambie esa ideología, esa cultura que tienen acá, esto va a seguir surgiendo

These social expectations regarding women were confirmed by one police officer, who in addition to indicating rights being violated by the violence, described the 'obligations' of women:

> The obligation of the woman is to educate herself, the role of the woman is to prepare herself for the sake of others, prepare herself for tomorrow, because she knows that she will have to form a home. Tomorrow she will have a family and will have to teach that family. She will have children. [Police 2, San Pedro].[46]

These obligations seem to carry a 'natural' restriction of the freedom of women to pursue other activities or enjoy free time, contrary to men. Perhaps the most representative reference to this situation arose during Focus Group 2:

> - Boys, I mean, they have been raised like that. Like the woman belongs to the house, and men can go play ball, they can go for drinks. Well, I mean, the right of men and the right of women, ok? And women, their duty, not their right, but their duty is the house, and men's duty, to bring in the money.
>
> - I don't know how he will do that, but he has to bring in the money! [R3 and R1, in Focus Group 2][47]

According to the interviews with victims and service providers, men feel 'entitled' to leisure activities as a consequence of their economic contribution to the household, which in Jujuy means regularly playing football, going out dancing and drinking with friends. These activities are referred to consistently throughout all interviews.

Women do not have similar activities on their own, even if they also contribute to the household economically. The absence of recreational activities for women is normally perceived as a 'natural' consequence of having children and the care taking responsibilities that fall in most cases only on them. This is also reflected in the limited offer of activities for women that exist in the province. One of the representatives of civil associations addressed this issue when discussing the possible roots of women's acceptance of traditional roles:

[46] La obligaciones de la mujer, es este, educarse, este, el rol de la mujer es prepararse para el bien de otros, prepararse para el día de mañana al ser mujer sabe que va a tener, este, va a tener que formar un hogar, va este, va el día de mañana va a ser esto, va a tener un, va a tener familia y va a tener que enseñar a esa familia. Osea, es que va a tener hijos.

[47] R3: 'A los varones, digamos, los criaron así, digamos. Como que la mujer tiene que ser de la casa, y vos podés irte a jugar a la pelota, podés ir a tomar. Bueno, osea, derecho de varón y derecho de mujer. No? Y la mujer, su deber, no derecho, pero el deber es el deber es la casa. Y el deber del varón, traer la plata. R1: No sé cómo lo va a traer, pero tiene que traer la plata.

> There is a lack of opportunities to create different experiences, in order to grow up without thinking that the only thing that they can do is to be a mom and have a family. In lower classes that is more difficult, because the only existing institutions are schools and social support institutions. There are no other artistic or creative options where women can develop other capacities. And well, the same for boys, but for girls there is really nothing. Girls from middle class learn English, practice a sport or some artistic activity like dancing, or something like that, but for lower classes that is very limited. [...]I think that also influences in the type of identifications girls make, and they have no opportunity to identify themselves with something other than being a mom, and being a young mother. [Civil Association 4, San Salvador][48]

This suggests that the lack of recreational activities and experiences outside the home, particularly affecting women from lower classes may contribute to enforce traditional gender roles in those social segments.

Yet adult women who manage to pass those two initial barriers, not having children and having the means, one additional barrier seems to hinder their recreational activities: concerns about appearances of promiscuity. If the woman is in a relationship, the range of activities that may raise the suspicion of infidelity increases, and according to the participants, these may extend from having a coffee with a male colleague to going dancing with other women. Hence, while virginity does not appear as socially mandated, infidelity and promiscuity are sanctioned practices, at least for women.

Based on the interviews with victims, the parental duties of women and men also seem to differ quite dramatically. Women are generally responsible for the well-being of children, caring for their health, hygiene and school performance, while men remain the ones in charge of correcting the children if they do something wrong or undesired, and actually 'educating' them. Fathers, even if violent, are considered to be able to 'protect' children from negative influences, such as criminal

[48]La falta de oportunidades de tener vivencias diferentes, de no crecer en las ideas solamente de que lo único que puede ser es mamá o formar una familia. Este, en sectores populares eso es más difícil, porque las únicas instituciones que tienen son las educativas o las de asistencia. Y no hay otras opciones del tipo recreativo o del tipo artístico, donde las mujeres puedan desarrollar otras capacidades. Y bueno, los varones, también. Porque es como que para las mujeres nenas no hay nada, salvo en los sectores medios, que inglés, a practicar algún deporte o hacer alguna artística de tipo danza, o lo que fuera. Para los sectores populares eso es muy limitado. [...] Que me parece que eso también influye mucho en las identificaciones que van haciendo las chicas, digamos. Y por allí, no tienen otra oportunidad de identificarse con otra cosa que no sea ser mamá. Y ser mamá tempranamente, además.

activities or alcohol and drug use, particularly in the case of boys. Some interviewed women referred to the role of fathers in the upbringing of boys, specially in relation to sexuality, and they expressed feeling uncomfortable with 'replacing' the fathers in these roles. I asked the victims how did men manage to perform these upbringing tasks if they worked all day and spent all free time performing adult leisure activities, and the answer was always similar: women 'report' situations to the fathers. Direct dialogue and interaction between the children and the fathers seem to be uncommon.

The economic contribution of the man, 'bringing the money', does not necessarily indicate that women would 'administer' that money nor that money is provided with regularity. On the contrary, one of the service providers characterised this contribution as 'spasmodic'. Moreover, the economic contribution is intended to cover the household's and the children's needs, and only to a minor extent, women's basic clothing and personal care needs. Women not working outside the home are not expected to have other needs, and certainly not to be met by the man's economic contribution.

Perceptions of class In order to conceptualise socio-economic class, I took into consideration references made in the interviews and my own observations during my stay in Jujuy. Based on these, I argue that three main socio-economic groups can be distinguished. The upper class consists of crops exporters, big scale merchants and graduated professionals working independently or employed by the public administration, such as lawyers, doctors and other professionals. Middle class is formed by other graduated professionals, such as psychologists, social workers and other service providers employed mainly by the public administration, followed by service providers with a tertiary education and holding a relatively secure job, such as nurses, teachers and police officers. The lower class include domestic workers, temporary workers, including seasonal workers and persons working in relation to 'social plans', and unemployed persons.

Generally speaking, two types of jobs seem to prevail in public administration, permanent positions and temporary jobs. Temporary jobs may result from fixed term employment contracts, or derive from 'social plans', where the person performing the job receives not a salary, but a social subsidy for a short period of time. These temporary jobs are, in most cases, politically assigned. Several interviewed victims expressed how they either lost the opportunity or managed to acquire a

position as a consequence of their 'political work'. Nevertheless, these temporary jobs were not considered by the women as providing them real economic independence, because of their contingent nature. This 'job' construction has a double social consequence. It implies a temporary income at best, cementing the person to the lower class rather than facilitating social mobility, and it stigmatises the person in light of the current political discourse against social plans, labelling all those receiving them as 'lazy'.

Political participation had nevertheless positive social and economic implications, according to one of the legal counsellors:

> There has been in recent years a strengthening of social (political) organisations in Jujuy. This development has allowed women who were alone to participate in groups, and even when economic pressures exist, they have a group of people backing them up, who can support them. [...] Economic resources have been improved by social organisations since 2000 to date. [Legal Counsellor 3, San Salvador][49]

The socio-economic configuration of each location under study differed according to a number of specific factors. Services providers located in Alto Comedero mentioned the specific socio-economic configuration of the region, often presenting it as 'the most humble' and 'marginal' neighbourhood in Jujuy: densely populated and receiving both internal and international migrants, Alto Comedero was originally made of informal settlements, gradually transforming into more formal housing arrangements. According to the interviewees, there is a large segment of the population working in the informal sector, particularly in small scale construction.

The socio-economic configuration of San Pedro also showed different characteristic in the city than in the suburbs, and this reflected in the type of victims accessing the services. The suburb included in the study was characterised by precarious settlements with people arriving from other regions of the province and other countries, particularly from Bolivia, and extreme poverty. The majority of these housing arrangements, the police officers explained, have no water, electricity or sewers. The level of education of the general population was low, only primary

[49]Ha habido en los ltimos diez aos un proceso de fortalecimiento de organizaciones sociales en Jujuy. Este crecimiento ha permitido a mujeres que estaban solas ahora pertenecen a grupos, y ms all de que se presenten los problemas de carencias econmicas hay un acompaamiento de un grupo de gente que puede sostener. [...] Los recursos econmicos estn siendo mejorados con las organizaciones sociales actualmente, del 2000 para esta parte.

education in most cases, and were temporarily employed in harvest (campesinos jornaleros). The situation in the city was very different. According to the police officers there, the average level of education of victims and perpetrators was secondary education, and in some cases, tertiary education. The type of employment resembled that of the city of San Salvador: public servants, merchants and different types of service providers.

In the North, two main elements appeared as deeply connected with the socio-economic reality of the place: the presence of the national border, facilitating a constant movement of peoples and goods, and the rurality, resulting in a more impoverished area. Two main types of areas can be distinguished, rural and intermediate rural, showing different activities. In rural areas, interviewees explained that herding and agriculture were the main activities, yet the public representative explained that jobs connected to harvest had diminished considerably, so a large percentage of the population was living with the support of social plans. In town, most employed people worked in the public administration. This notion was confirmed by the auxiliary prosecutor, who also explained that the merchant sector was very small in town, and inexistent in rural areas. Merchants would often hire one employee at most, and occasionally get help to load and unload the merchandise. 'Merchants do not really live here', he explained. He also described another economic activity characteristic of the region:

> There is a group of people, in poverty, that live of smuggling. Not big scale smuggling, but what we call 'vagallaje', they bring in kilos of coca leaves, clothing, shoes, and they sell in other cities. This is a group of humble people looking to survive. A lot of people with a social plan make ends meet this way. We are not talking of big scale smuggling, that's a different situation. [Prosecutor 1, North][50].

Service providers in San Salvador did not describe the socio-economic conformation of the city, but pointed out that victims accessing the services belong to a 'low' socio-economic status based on their employment situation, their education level and describing their general situation. Nevertheless, police officers located in the outskirts of the city emphasised the presence of migrant population from Bolivia

[50]Se da el tema de un grupo de personas que están en una situación por debajo, en una situación de pobreza, viven de lo que se llama el contrabando. El contrabandoo sea no el contrabando a gran escala pero si no el que lo llaman el 'vagallaje': llevan kilos de coca, llevan ropa, llevan zapatillas, y lo van a vender en otras ciudades. Hay un grupo de gente humilde que se la rebusca. Mucha gente que tiene un plan se la rebusca con esa situación. No hablamos del contrabando a gran escala que eso es otra situación

and the prevalence of precarious settlements in their assigned area, suggesting a class-based territorial distribution.

All service providers interviewed in all locations, both public servants and those providing services through NGOs, agreed that the segment of victims that access them were lower middle class and lower class, bearing in mind the class configuration in each location. They described the victims as being economically dependent on their partners in most cases, even those having a job, and as facing economic pressures in all cases. This is also the case for my sample of victims, having recruited them through the network of public servants and NGOs. All interviewed women belonged to middle low to low class in each segment, and all except one, had independent economic activities. Moreover, almost half of the interviewed victims (7/15) had worked as domestic workers at some point of their lives, either cleaning houses or babysitting and all of them had started working as in-home baby sitters below the age of 15, three of them below 11 years old. In all cases, domestic work required them to move to another city in order to do so. The level of education varied depending on the location, yet in general terms, the lowest average education level was found in the North and it was equivalent to primary school (4/5), and the average highest education level was found in the city of San Salvador, equivalent to tertiary education (2/3).

Two types of narratives emerged suggesting interconnections between gender and class. Throughout the interviews, specially among victims, the breadwinning role of the man, as sole or main economic support of the family was clear. This economic contribution of men, however, is directly affected by the general economic situation in the province. References to unemployment, high prices, political instability and their impact at household level were common, yet unemployment was more often mentioned by service providers than victims, and connected to a variety of issues such as closing down of factories, changing crops and changing of governments. Victims referred more often to the general increase in prices. The frustration of men in relation to their impossibility to provide for the family, and fulfil their gender mandated role, was expressed during one of the focus groups, yet, victims expressed that men feel to have 'fulfilled' their duty of economic support even if money is not enough to fit the basic needs of the household. This difference of opinion may derive from the type of respondents, community women non-victims on one hand, and victims on the other hand.

References to gender discriminatory aspects in employment practices were also common among service providers. One of the legal counsellors explained:

> Because you are a woman, machismo prevents you from finding a job. And if you got a job in certain sectors, it's because you allegedly slept with someone. So, you are never appreciated for your knowledge, your capacity. [Legal Counsellor 2, San Salvador][51]

Another legal counsellor expressed a similar view, arguing that 'men can access the economic power much easier than women, because of a patriarcal reason.'[52] Gender discrimination in the labour market had additional consequences. For instance, service providers explained that several of the economic activities pursued by low middle class women took place in the informal market, requiring long or irregular hours and lacking any legal protection, such as holiday days, maternity leave or even paid sick leave. These common class related consequences often had an impact on the private sphere of the woman, clashing with social mandated gender roles. This was explained by one psychologist:

> Often women have to work many hours, sometimes they have to share child caring activities but she is the only one dealing with it, because he...he cannot take care of the kids, he has not time, but she has to be able to divide herself. But then he will accuse her of abandonment because she's working all day and doesn't look after the kids, but nor does he. [Psychologist 1, Alto Comedero][53]

One of the public legal representatives pointed out the important class connotations of such gender patterns in labour, 'these women cannot hire a nanny, a housemaid, or pay some relatives to look after the children', resulting in claims of child neglect.[54] A middle or upper class woman could solve this situation 'differently'. This was clearly reflected in the interviews with victims, with some of them expressing their desire to spend more time at home, and feelings of guilt because of the time their children spent alone.

[51]Por ser mujer, si el machismo hace que no podás entrar a un trabajo. Y si estás en un trabajo, parece que estás, digamos, de determinados sectores, porque te acostaste con fulano o sultano. Entonces, no se te valora, No?, por los conocimientos que tenés, por lo que vos podés.

[52]'El poder económico esta en manos del hombre mucho más fácil que el de la mujer, por una cuestión patriarcal'. [Legal Counsellor 3]

[53]Muchas veces la mujeres tienen que trabajar mucho tiempo; hay ocasiones que tiene que dividirse la tarea entre la crianza de los hijos y solamente ella lo realiza porque él él no puede ocuparse de los hijos, él no tiene tiempo pero ella tiene que poder distribuirse. Pero el después él la acusa de madre abandónica porque se pasa todo el tiempo trabajando y no cuida a los chicos, pero él tampoco se ocupa.

[54]According to Legal Representative 2, San Salvador.

Perceptions of race Race was, according to the interviewed persons, a matter of skin colour and often taken as synonym of indigenousness. Social differentiation based on skin colour was visible in multiple aspects of social life. Based on my observations, employment appeared racialised. All professionals interviewed, especially judicial professionals, were white, while the rest of public administration employees, specially police agents, had darker skin. This situation was also described by all three of the legal counsellors interviewed, who also expressed a connection between race and indigenousness:

> If you go to the Tribunals, where you know that a certain social sector, certain social layer, can be found, you'll see no original people. There's no 'morochos' (coloured persons). Morochos are the exception as employees, as judges, as prosecutors. There are a few, yes, but it's not representative of the population of Jujuy, and they are deeply discriminated. I mean, there is a lot of discrimination against those who actually constitute the majority of the population. They are the ones who cannot get a job, or can hardly get one, any job, education, or anything. [Legal Counsellor 2, San Salvador][55]

Racial discrimination in relation to employment was again mentioned by another of the Legal Counsellors, who also emphasised the limited awareness of the socio-economic class implications of race by those affected:

> There is a big connection between middle class and the colour of the skin in Jujuy. Original peoples in Jujuy are highly concentrated in the lower class due to the imposition of the prevailing colonising sector in Jujuy and Argentina. This is supported by the dogmatic believe that *Collas*[56] don't care. The same people in lower class think, when they reach the middle class, that it was the result of personal effort. The successful segments of the lower class, instead of considering that they belong to the outcasts of society, they say the rest did not succeeded

[55] Y vos vas a tribunales, que es un lugar donde sabés que hay cierto sector, cierta capa social que va allí, y no hay ningún originario. No hay ningún morocho. Los morochos son la excepción como empleados, o como jueces o como fiscales. Hay. No te digo que no. Pero es algo impresionante que ese sector, digamos, no expresa lo que es la población de Jujuy. No? Y son profundamente discriminados. O sea, hay mucha discriminación hacia lo que es en realidad la mayoría de la población. [...] Y son, viste, los que no llegan a un empleo, los que llegan con dificultad... Sí, a cualquier empleo, a la educación, a lo que fuera, digamos.

[56] The most 'popular' indigenous ethnicity of the north according to the national imaginary.

> because they couldn't, and they do not analyse that it was much more difficult for them because of racial issues. [Legal Counsellor 3, San Salvador.][57]

This perception seems backed up by the interviews, where references to race discrimination in relation to employment by those in the lower classes were extremely rare. No references associating their social class to other categories, such as race, indigenousness or rurality were explicitly made by the women. Instead, they considered 'education' as the only element directly influencing class. This interpretation was particularly evident in relation to some victims. As commented, seven interviewed victims had worked as domestic workers when in school age. Two of these women migrated from Bolivia, while the other five migrated internally, within country or the province for such purpose. They associated their need to work since so young with economic pressures affecting their families, and justified the type of job they got because that was 'the only thing they knew at that age.' This situation seems generates a loop: having no education or training to do anything else lead them to low qualified jobs, which prevents them from completing their education and training hindering their aspirations to a better job in the future.

Nevertheless, according to another legal counsellor, lack of social mobility of domestic workers was racially determined in some cases:

> You will always hear, 'this f. n...this f. indian... this f. chaguanca'. In Ledesma and San Pedro there is very big community, and they are employed for domestic servitude, the majority of women are only employed for these tasks. You will not see a chaguanca in a shop helping the customers. So even for employment, they are used as dish washers, nannies, housemaids. This is another form of symbolic violence. [Legal Counsellor 1, San Salvador.][58]

[57] Hay una conexión muy grande entre la clase media y los colores de la piel en Jujuy. Los sectores originarios de Jujuy tienden altísimamente a la clase baja eso por una cuestión de imposición del sector dominante que ha sido colonizador en Jujuy y en la Argentina. Y esto es avalado incluso por la creencia dogmática provincial de que al coya no le interesa. Los mismos sectores populares cuando logran una acceso a la clase media piensan que son factores de superacin personal. [...] Los sectores exitosos de los sectores populares en vez de analizar la transformación que los sectores a los que pertenecen son los desplazados y terminan diciendo no, los otros no se superaron porque no pudieron y no terminan analizando la cuestin de que a ellos les cost muchsimo ms llegar a donde han llegado por una cuestin racial.

[58] Siempre vas a escuchar, 'esta negra de... o esta india de... esa chaguanca de'. En todo Ledesma y San Pedro existe muchísimo esta comunidad y son los ocupados para servidumbre doméstica, la mayoría de las mujeres únicamente las ocupan para ese tipo de cosas, no vas a ver en los comercios una chaguanca atendiendo al público. Así que hasta para la inserción laboral son para lavar los platos, para cuidar los niños, limpiar la casa, que es otra violencia simbólica.

Another event that suggested a racialised social construction was the Students' Festival, celebrating Spring, when the 'Queen of Students' is elected among all secondary schools in the province. Annually, this festival conveys that beauty ideals are far from standard physical characteristics of the majority of population in Jujuy. Queens are 'gringas', always have white skin, blond hair and blue eyes. Discrimination against women who do not resemble European standards of appearance was pointed out by two of the victims, who nevertheless, did not address it as racist. Asking a victim whether she considered that she was discriminated against by any reason besides her gender, she replied:

> - Look at me, am I pretty?
> - *Is that important?*
> - Well yes! Because here they will discriminate you based on that: because you are fat, or because you are black, or because you're ugly. You see? So, some think too much of themselves here, It happens with the police, when sometimes a gringo comes along, well...[Victim 5, North][59]

The importance of 'physical appearance', including how you dress and talk, for accessing services was also highlighted by service providers, and again connected to class and race.

Perceptions of indigenousness In relation to the social construction of indigenousness, a clarification of terminology is needed. As the result of a process of cultural awareness, indigenous peoples are more and more commonly referred to as 'original peoples' ('Pueblos Originarios'), and the term has been incorporated in the National Constitution in 1994. Nevertheless, the term 'indian' is still used in many settings, with no clear connotation attached to it. I use the term 'indigenous' to refer to the category as such, but use in all quotes the terminology used by the participant.

As commented, the two last national census, conducted in 2001 and 2010, measured indigenous belonging of the population through 'self-recognition'. According to its findings, Jujuy is among the provinces with a highest level of person self-identifying as having indigenous descent. Similar to other provinces in the Northwest region, Jujuy publicly claims to be 'proud of its indigenous origin', and the

[59]- Mireme a la cara, soy linda? - Eso tiene que ver? - Y sí! Porque aquí te discriminan por eso: por que sos gorda, porque sos negra, porque sos fea. Entiende? Entonces, aquí se creen todo muy algunos, te quiero decir, No? Pasa con la policía, que a veces si viene una gringo por allí...

local culture is deeply connected to indigenous festivities, such as Carnival, the Dia de los Muertos and other trade and religious festivities, regardless of the people's ethnic background. Nevertheless, this proud feeling was not perceived in the interviews. On the contrary, people seemed disinclined to acknowledge any indigenous belonging. One of the service provider suggested the following explanation:

> This is very striking, because the majority of the population of Jujuy is *original*. But the majority do not recognise themselves as original peoples. Why? Because discrimination is so terrible. [Legal Counsellor 2, San Salvador][60]

Victims and service providers introduced two notions as connected to original peoples: education and culture, on one hand, and rurality, on the other. In one case, the combination of these aspects as constitutive elements of the 'indigenousness' was made very clear by the denial of one respondent to consider her own origin as indigenous, even when one of her grandparents spoke normally in quechua. She did not consider herself as indigenous because she lived in a city. Similarly, one of the victims interviewed in the Puna region, classified as rural for this study, did consider herself and everybody else in her environment as 'native originals'. Also, references to discrimination based on belonging to original peoples were often connected to rurality, 'coming from the countryside' was seen as synonym of lack of education and ignorance.

The 'cultural' aspect that respondents referred to pointed to certain characteristics commonly connected to indigenous idiosyncrasies, such as shyness, shown by barely talking or doing it in a very low voice, and enduring extreme conditions, such as poverty and violence, instead of group practices, since these have been largely incorporated to the mainstream culture. The distinction between indigenous and non-indigenous however remains, based now on 'personality traits'. The 'naturalising' discourse of these personal characteristics was challenged by one of the Legal Counsellors, suggesting that they are the result of the historical oppression these peoples had to endure.

In addition, several respondents, including victims, pointed out to indigenous culture as upholding strict and traditional gender roles. This, however, suggests a certain contradiction at times, as explained by this psychologist:

[60]Mirá, es algo muy llamativo, porque la mayoría de la población jujeña es originaria. Pero son originarios que te diría que en su mayoría no se reconocen originarios. Por qué? Porque la discriminación es tan terrible.

> I think that the North has... a much more machista imprint, which is weird. Right? There is like some contradiction, because on the other hand, the matriarcal construction is also very strong, right? The 'Pacha Mama'[61], the woman, the strong mother, right? So at some point, it brings this contradiction. [Psychologist 4, North][62]

The connection between festivities and alcohol was also recurrent throughout the interviews:

> Here in the Puna we have different saints, and for any of those saints we celebrate 'misachicos', this is a home mass for a saint, with food, celebrating the Saint's day, and drinking all sorts of alcoholic beverages, for adults and children. [...] These activities take place all year round, specially around July and August. [...] Then we have the 'Mancafiesta', the 'Dia de los Santos' [...]. Then, New Year's and we start with Carnival in January, first the students' carnival and then carnival typical of the region, and well, so, party all year round. That is everywhere, in all places, all social sectors. [...] And alcohol is always there. [Social Worker 5, North][63]

Although this quote may suggest that alcohol and festivities may be particularly connected to the combination of indigenousness and religion, based on the interviews with victims and service providers, excessive alcohol consumption appeared connected to a wide variety of activities, cutting across the complete social fabric. Two of the prosecutors explained that alcohol 'is normal in the North', and that the further north one goes, the more evident it becomes.

Perceptions of migration The proximity of the national border showed consequences in relation to the social construction of the category of migration. In general terms, the category of migration is transformed into nationality, and more

[61] 'Pacha Mama' is the indigenous cult of 'Mother Earth', celebrated every year with offerings and ceremonies.

[62] Creo que el norte es como...tiene una impronta mucho más machista. Que a la vez es raro, no? porque hay como una contradicción, porque por otro lado es muy fuerte también en un punto el matriarcado, no? la pacha mama, la mujer, la madre que sostiene, no? Entonces se genera en algún punto esta contradicción.

[63] Todo lo que es la Puna, tenemos diferentes santos sí? Con cualquiera de los santos se realizan Misachicos, que sería una misa para un santito en una casa, que hacen ahí hacen comida, festejan lo que es el día del santo e ingieren bebidas alcohólicas de todo tipo y tanto adultos como niños. [...] Son actividades que se hacen durante todo el año, más característica es entre Julio y Agosto. [...] Después tenemos la Mancafiesta, después tenemos la fiesta de los santos [...]. Después, bueno viene fiesta de fin de año y tambin nosotros comenzamos carnival en enero, con el mini carnival que es el de los universitarios, [...] seguimos con el carnival característico de acá de la zona y bueno y así todo el año hay fiesta. En todos lados, en todos los lugares, en todos los sectores.[...] Siempre está la bebida.

specifically, into Bolivian nationality given the lack of migratory waves from other countries. Nevertheless, service providers argued that the closer to the border, the more imperceptible nationality becomes. One of the respondents in the North explained:

> Taking into account the particularity of the region, there is a distinction between Bolivians and Argentinians, but in fact, here they are the same. I mean, there is one bridge separating two towns. Buildings are different here and there, people dress differently here and there, but culture is in essence the same. 150 km south until Tilcara (Argentina), you will find the same people, the same culture as 150, 80 km north until Tupiza (Bolivia). [Religious Association 2, North][64]

This perception of 'equality' between Bolivians and Argentinians, apparently blurring nationality, is also shared by the chief of the police. I asked him if Bolivians were discriminated against, he replied:

> Since we are in the frontier, no. It's more regional. Maybe further down in Jujuy, or in San Salvador, or in Cordoba or in Buenos Aires, where (Bolivians) are more concentrated, people say 'we are Argentinians', and then a Bolivian nationality emerges. I think there, in big cities (discrimination) is common. But here in La Quiaca, we are so mixed up...you don't really know if people come from Bolivia or not. For us it is almost the same. [Police agent 6, North][65]

Nevertheless, some differences appear to exist even in the absence of discrimination based on nationality, connected in fact to the person' status as migrant. The religious association providing support to migrants explained that Bolivians 'think less of themselves' with their Bolivian ID card, and this changes once they acquire their Argentinian ID. Similarly, they emphasised that Bolivian parents want their kids to be born in Argentina, in order to procure them a national ID. The hospital social worker indicated the same. Another social worker explained that La Quiaca

[64]Después tenemos en cuenta la particularidad de la zona, se diferencia bolivianos de argentinos, pero en realidad, es lo mismo acá, o sea hay un puente que separa dos ciudades. Que allá se construye de una forma y acá de otra y acá se visten de una forma u otra, pero la cultura, en esencia, es la misma. 150 km má s abajo, hasta Tilcara vas a ver el mismo pueblo, la misma cultura que 150, que 80 km hasta Tupiza.

[65]Como estamos en zona de frontera y es como más zonal Ponéle más allá en Jujuy, y ponele en San Salvador, o en Córdoba, o en Buenos Aires donde ellos están más agregados, o sea, dicen nosotros somos Argentinos y viene una de nacionalidad Boliviana que haya venido a trabajar, entonces yo creo que allí en esos sectores, en las grandes ciudades donde es común, yo creo que s. Pero en este sector aquí en la Quiaca yo creo que no porque estamos tan, tan mezcladosvos no sabés si son de Bolivia o no. Para nosotros ya es casi lo mismo.

has many 'illegal Bolivian migrants', without documents, suggesting that this has, indeed, negative consequences.

The situation in San Salvador differs from that of the North. Bolivians, specially newcomers, are not only distinguished but discriminated against. One service provider stated:

> There is a lot of discrimination here and it is a form of violence. Since this is a frontier province, there is a lot of movement of persons from Bolivia, and generally, Bolivians are discriminated against. And a big part of our population in Jujuy is of Bolivian descent. And the Bolivian woman is looked down. [Prosecutor 3, San Salvador][66]

This discriminatory treatment was confirmed by the two Bolivian victims and the three victims of Bolivian descent included in the sample.

Perceptions of rurality Rurality was defined differently depending on the persons and contexts. My configuration of rurality relied on the availability of services for victims of IPV in addition to population density, degree of urbanisation, proximity to a metropolitan area and principal economic activity. La Quiaca was classified as intermediate rural, Abra Pampa as rural, and the surrounding areas, such as Santa Catalina, Condor and Timon Cruz, as extreme rural. Inhabitants of San Salvador, the capital province, and San Pedro held similar understandings of rurality as the predetermined category of rurality I had delineated. Nevertheless, areas that I considered as intermediate rural, such as La Quiaca, were perceived as urban by its inhabitants, specially by those who had migrated there from extreme rural areas. This was illustrated by one of the respondents:

> For many kids from the countryside, this little town is like a big city, because of the possibilities of social contact, shopping, education, and a number of situations. [Prosecutor 1, North][67]

Service providers located in the North explained that the context of rurality triggered a particular dynamic of internal migration and family construction. Local

[66] Acá hay mucha discriminación, y es una forma de violencia. Este, al ser una provincia fronteriza, hay mucha afluencia, influencia de personas de Bolivia, y generalmente el Boliviano es discriminado. Y un sector muy grande de nuestra población en el sector de Jujuy son descendientes de bolivianos. Y a la mujer boliviana se la ve en forma despectiva.

[67] Muchos chicos del campo, para ellos es como, este pueblito es como si fuera una gran ciudad porque el ámbito de socialización, de comercialización, de estudios, de un montón de situaciones.

towns such as Abra Pampa and La Quiaca would receive adolescents due to the existence of high schools. This new trend challenges the traditional view that children were not able to receive education due to the seasonal work typical in agricultural economies, where families normally moved to different areas during harvest, preventing children from attending school. Yet, it brings a new challenge, since parents often continue to work in the fields and only occasionally reunite with these kids. Such separation of family members would be stressed even further when fathers migrate to other provinces for seasonal work, which, considering Jujuy's location and the areas of the national territory where seasonal agriculture takes place, could represent 1000 km away.

Regarding discriminatory feelings, participants refer to rurality as 'el campo' (the countryside), and in most cases, in pejorative terms. Respondents that grew up in the countryside, specially those now living in urban areas, often acknowledged their rural background with a shameful tone. They agreed that they were easy targets of discrimination because of their rural origin and the presumed lack of education resulting from it. They claimed to be often treated 'as ignorants'. Most rural women interviewed in this study agreed that their education had indeed been limited as a consequence of the rurality of the area were they grew up.

Rurality as such is influenced by one crucial element, the national border with Bolivia. One of the service providers explained it as such:

> Here we have an additional issue, the national border, with a constant fluidity of people coming and going, and then, this national border brings an identity conflict, I think. Kids come here and they see, I don't know, more technology, and well, they aspire to situations more...big cities...we currently have a critical situation regarding kids running from home. [Prosecutor 1, North][68]

The socio-geographical configuration of Jujuy emerges in the narratives suggesting an idea of periphery/centrality organised around possibilities regarding 'access' in general, beyond services for IPV. This was perceived, for instance, in references made by respondents interviewed in the North in relation to the to the capital of the province as 'Jujuy', rather than the full extension of the territory. This

[68]Pero aquí se suma una problemática que es la frontera, bien? Que es una constante fluidez de personas que entran y salen, y después también bueno la misma frontera me parece a mí que genera una crisis de identidad, no? Porque, bueno, vienen los chicos aquí, empiezan a verqué sé yo tienen más tecnología, y bueno, aspiran a situaciones mucho másа las grandes ciudadeshoy estamos atravesando una situación crítica por el tema de los chicos que se van del hogar.

notion that the capital constitutes the centrality of the province was also found in interviews conducted in San Pedro and Alto Comedero, suggesting that it is not a situation relating to the contrast between urban/rural areas, transcending the geographical aspects. For instance, the testimony of this service provider in Alto Comedero illustrates that the geographical periphery coincides with social problems:

> In Alto Comedero settlements have flourished. It is very poor people. And, they... I noticed that they seem to feel a bit marginalised from society. In those places, unfortunately, there is a lot...a very high crime rate, let's say. Larceny, robbery, and in many cases, IPV. [Prosecutor 2, Alto Comedero][69]

As explained in the segment of class, Alto Comedero has become the preferred settlement of migrants from neighbouring countries. The social configuration of the place may have similar isolating effects to the geographical positioning, generating feelings of exclusion.

Synthesis of the findings This review of the perceptions regarding the main categories of analysis in this study section suggests that several categories of social distinction exist in Jujuy, regardless of the reticence of some participants to acknowledge them. Firstly, gender discrimination was largely acknowledged, almost taken for granted, yet service providers did not appear to believe that changes in public policies could modify social practices. Traditional gender roles seem to prevail in the province, emphasising the reproductive role of women, child bearing and promoting family-oriented decisions. This has important consequences on the socio-economic status of women, yet class appears to have influence in the perpetuation of these traditional roles by limiting the experiences of women and restricting women in lower classes to low qualified and demanding jobs.

Secondly, class seemed largely perceived as a direct consequence of education and the subsequent jobs and housing conditions, although it appeared as a gendered and racialised construction. Race, initially constructed as a skin colour, distinction with no class implications, was almost immediately connected to indigenousness,

[69][En Alto Comedero] han proliferado los asentamientos. Es gente muy humilde. Y, este, que ellos mismos se...yo, por lo que noto, ellos mismos como que se sienten marginados un poco de la sociedad. Y en esos lugares, lamentablemente, hay mucho el índice delictivo es muy alto, digamos. Desde lo que son hurtos, robos, hasta que es, este, muchos casos, también, de violencia.

embedded in a double discourse of pride and discrimination. Race was also connected to migration, in particular to Bolivian nationality in most cases.

Rurality was understood as a matter of location and lack of resources, but emphasising the lack of education and opportunities of personal growth. Overall, a sense of centrality in contraposition to periphery and marginalisation emerged in connection to geographical location and availability of resources, but also transcending the geography, connected instead with possibilities and impossibilities derived from the social location of persons due to their gender, race and class. This notion contributes to reveal the configuration of inequality.

In addition, one element appeared connected to the construction of rurality, yet also touching upon race: the national border with Bolivia. The constant movement of persons seems to create a permanent transition area, not only regarding persons but also regarding the construction of meaning. The national border has an influence in the construction of social categories and the identity, customs and notions, including violence. It seems to both generate change, particularly in people coming in, and prevent change at the same time.

In the next section, I discuss the configuration of these social categories and their connection to domestic violence.

7.3.3 Connections between IPV in Jujuy and the pre-determined categories of analysis.

In this section, the third research question of the study is addressed by exploring how the pre-determined categories of analysis (gender, race, class, indigenousness, migration and rurality) are connected to domestic violence. In doing so, I analyse the discussions held in two focus groups with community women, and interviews with victims, service providers and civil associations' representatives.

Connections between gender and IPV The connection between gender discrimination and violence was clearly made by the majority of service providers. The overall perception, illustrated by this quote of one of the prosecutors, emphasised the unequal position of women in IPV cases:

> So if the man comes home at 3PM, after work, with a couple of beers and he didn't like what the woman did or did not do, he will exert violence against the woman, because she is the woman and has to serve him. That's why I use 'gender based', he's taking it out on her because she is a woman. It's not among peers. It is against the woman, who they consider inferior. Unfortunately, there is no gender equality here in Jujuy. [Prosecutor 3, San Salvador][70]

Most service providers also emphasised that gender is the social category cutting through domestic violence, regardless of the social sector where it takes place. They emphasised the 'universality' of violence and seem careful not to signal IPV as privative of lower socio-economic classes. Nevertheless, as commented in the previous section, gender was perceived as constructed differently in some social sectors, and these were more commonly seen as 'more affected' by the violence.

The 'gender based' construction of violence described by the prosecutor above is perceived as rooted in class among police officers. Police officers often connected the cases of violence to the lack of education, economic pressure and alcohol abuse, characteristics they associated with the persons accessing their services. These two police officers provide an example:

> Violence among these people happens due to...it derives from drinking alcohol, specially during the weekend. Thus, when the abuser arrives home under the influence, well, then is when the discussions begin and physical violence takes place. [Police 1, San Pedro][71]

In general terms, victims did not explicitly refer to domestic violence as the result of gender discrimination, but there are implicit references to gender roles. In most cases they attributed the violence to the 'submissive' character of women, and the dominant character of men. When I asked them why women and men had that 'character', they all agreed that they were raised in that way, implicitly signalling gender construction, at least at family level. Being educated to behave in such a submissive way was also the 'shared' trait and experience of all women, according

[70] Entonces si el hombre viene a las tres de la tarde después de cumplir la jornada y completar el trabajo, con dos copas encima, y no le gusto algo que la mujer hizo, o que no hizo, el va a ejercer violencia contra la mujer, por la misma situación de que es la mujer y esta obligada a atenderlo. Por eso digo el género, se desquita porque es ella la que tiene que atenderlo. No es contra un par. Es contra la mujer que ellos consideran inferior. Lamentablemente acá en Jujuy no tenemos una igualdad de género.

[71] el maltrato en general en esta clase de gente es por... se origina a través de la ingesta de bebidas alcohólicas, más los fines de semana. Así que cuando el agresor llega en ese estado, bueno, allí comienza la discusión y a su vez se desata la agresión física.

to the victims. This was confirmed by the victims answers to my questions directed to discover homogeneous and heterogenous aspects among women victims of IPV, and by their reactions toward the statement of universal nature of the violence.

The participants also considered that many of the problems arising within the couple were connected to the performance of gender roles. Several women pointed out that a violent episode could take place because food was not ready at lunch time, or was not to the taste of the husband, or the children were not clean and dressed up, etc. Submissive and 'understanding' behaviour of women was expected, and often encouraged, by some service providers, especially police and health care professionals. Victims explained how these service providers, and in some occasions also public defenders and prosecutors, indicated that insults and threats, and even physical aggression were 'normal', even in cases where these 'discussions' resulted in minor injuries. One victim explained the police's response when she complained after her husband had grabbed her by the neck and hit her against the wall because she asked him not to smoke while the children were eating:

> They made me talk to the chief, I told him all the facts. And so, he told me: 'Madam, you have to go home and talk to your husband, because these things always happen, you have to solve it together'. [Victim 6, San Salvador][72]

Several interviewed women expressed how physical violence was to a large extent justified by service providers 'in some situations', such as infidelity committed by the woman. This notion was confirmed during focus groups:

> - Last year, my neighbour...I heard her screaming and screaming. When I saw the husband, he had her on top of the car, choking her. He was suffocating her. [...] So we called the police, but the guy had left before the police arrived. And the officer asked: 'What happened? What did you do to him? Maybe you cheated on him, so he came and beat you up!'.
>
> - See, that's the police. (Women nod) [FG 1, Alto Comedero][73]

[72]Me hicieron pasar con el jefe, le comento todo le conté los hechos así. Y asi fue, me dijo 'señora usted tiene que ir a su casa hablar con su marido porque siempre pasan estas cosas, usted tiene que resolverlo con él."

[73]R4- El año pasado, mi vecina de enfrente...yo escuché que ella gritaba y gritaba. Cuando lo ví al hombre, que la tenía sobre el auto y la estaba ahorcando, loa estaba asfixiando [...] Entonces, lo golpeé en la cabeza al hombre. Y se metió así para adentro y empez a tirar todo adentro. Entonces, llamamos la policía. Hasta que vino la policía, él salió y se fue, antes que la policía llegara. Y la policía preguntó: Qué pasó? Qué le hiciste? Dice: Capaz que vos le engañás, por eso él te vino a pegar. - No, sí. Son así los policías.

This quote suggests that physical violence is at times institutionally tolerated in order to reinforce socially mandated gender roles. Besides victims' testimonies, anecdotes illustrating the gender-biased response of the police, and often at the hospitals', abounded in the narratives of legal counsellors, psychologist, social workers and the representatives of civil associations. Consequently, victims claimed that police either refused to respond to the violence, or responded by merely taking the victim testimony, without formally reporting the violence, even when women insisted. This was very clearly supported by legal counsellors, psychologist, social workers and the representatives of civil associations. In seven cases, due to the lack of police response, women expressed they had reached a point when they 'had to defend themselves', while in three of these cases, the abuser was encouraged to report the victim's reaction.

The belief that men may use some sort of violence to control the woman's behaviour reflects in the understanding of what constitutes IPV. In addition, if the criminalisation of violence is taken as a parameter, we could argue that for police and prosecutors, only severe and extreme violence constitute IPV, while other physical injuries, including sexual violence, psychological violence and economic violence constitute 'mistreatment', and as such, is subject to civil protection measures only.

Yet victims of domestic violence had different understandings of violence. Women made a similar distinction between 'violence', although comprising any type of physical violence, and 'mistreatment', including psychological and economic violence, sometimes reported to the police and the judiciary in order to obtain an eviction order or alimony. Describing mistreatment in general, women pointed out infidelity, abandonment and economic restrictions.

Connections between class and IPV 'Abandonment', a form of mistreatment, had a clear economic component. Men left the family home, breaking up the relationship, and stopped contributing to the children's and household economic support. This interruption of the economic 'duty' of the man, described in the previous section, is the main constitutive element of the abandonment and a normal consequence of separation, regardless of wether men are legally mandated to provide alimony. The woman's socially mandated duty - taking care of the children and household- however, will continue. Yet in the attempt to supporting their children, mothers would take demanding jobs that often result in their own

'abandonment' of their children. This complex situation was explained by one of the public representatives:

> I remember one case clearly. The woman went to Calafate to find work (harvest jobs), because the husband was not working. They lived with the grandparents, very poorly. Finally, after four or five years that the woman was coming and going to Calafate, taking the kids and bringing them back, he sues her for the custody of the kids. So I reply the complaint, and I framed the situation as gender based violence. The violence of not having anything to eat, having to go out and look for food and then end up losing your kids.[...] These situations happen very often. [...] We often tell women: 'wait until your kids are older to claim alimony, try to survive, because the moment you sue for alimony,' the response...
>
> This is the real drama. Not only when men slap them twice and take the kids, these are the real gender based violence situations, do you see? [Public Representative 2, San Salvado][74]

Nevertheless, police officers addressed women's fears of losing their children as the result of lack of information and ignorance about the system. The opposing views between the Public Representatives and the Police, suggest a lack of communication between institutions.

Regardless the fear of losing the kids, women agreed that 'abandonment' is in most cases preferred over enduring the violence, suggesting that economic support after the separation often comes with further demands and more violence. This situation illustrates the intersection of gender and class, and the limitation of the institutional response. The real possibility of surviving without the economic support of the husband is directly connected to the economic resources of the woman.

The restriction of means to cover basic needs that men impose on the women was referred to as a form of mistreatment by the victims, yet in the focus group

[74]Este es el caso que yo tengo puntualmente registrado. La señora se fue al Calafate para encontrar trabajo, porque el marido no trabajaba. Vivían en la casa de los suegros. Vivían muy mal. Y bueno, finalmente, después de cuatro o cinco aos que la mujer iba, volvía, iba, los llevaba a los chicos, los volvía a traer y así. Finalmente, él le hace una demanda. Le interpone una demanda de tenencia. [...] Yo contesto la demanda. Justamente en esa demanda hago mención de la violencia de género que significa no tener qué comer. Tener que salir para buscar la comida y después terminar perdiendo los hijos.[...] estas situaciones se dan mucho. [...] Muchas veces nosotros decimos: bueno, esperen a que los chicos sean más grandes para demandar los alimentos. Arréglencelas como puedan. Porque en cuanto vos demandaste los alimentos, ahí nomás...Éste es el verdadero drama. No cuando le da dos cachetadas y se llevan los chicos. Estas son las verdaderas situaciones de violencia de género. Me entendés?

with the political activists, those restrictions were considered as related to class rather than gender inequality, and to hardship people face as a consequence of the general economic situation in the province. Socio-economic status is, in fact, the most commonly mentioned aspect in relation to the heterogeneity of women suffering domestic violence. Access to economic means creates differences among women, since it is key to ending the violence by providing victims with legal counsel and psychological support to help them separate, and economic independency to remain separated.

> - People in higher classes, they solve it more easily. They hire a lawyer and make it stop right away. But people from lower classes, with less means, can't, because they don't listen to you, they don't pay you attention, they tell you 'oh well, madam, you have to go through it, or come another day'...so there's no justice for these people, you see? There's none. Moreover, there is more violence among us, the people in lower classes. There's more violence.
>
> - *Do you think there is more violence, or that it lasts longer?*
>
> - There is more, and lasts longer. [Victim 13, North][75]

Victims and service providers consider that economic restraints are the reason women endure the violence for many years, and that violence is 'more visible' because women have no alternative means of resolution. All service providers consider that women in upper classes 'solve things differently'.

Class seems to have direct implications in relation to protection from violence. Police officers indicated that in many cases, civil eviction orders are not issued 'when the man has no place to go'. Even when eviction orders are granted, men remain at home or have access to home due to lack of police enforcement or material deficiencies. One of the police agents located in suburbs explained that lack of personnel made police protection associated to protection orders, as mandated by law, impossible. Considering this, it is understandable that one of the legal counsellors explained that material deficiencies, such as not having a proper locker or a fence, made eviction orders and protection orders ineffective. Economic restrictions, then, seem to have a crucial role in 'triggering' violence, although not

[75]Los que tienen alta sociedad y todo eso, ellos lo arreglan más fácil. Se ponen un abogado, ponen un alto enseguida. Pero la gente de culturas más bajas, de recursos más bajos, entonces como que no podés porque no te dan mucha pelota, no te dan mucha importancia, te dicen ah bueno, [...] señora, qué va a hacer, hay que aguantar, o vuélvase otro día o sea no está la justicia para esta gente, ve? No est. Entonces y es más, sobretodo más la violencia está en sea gente que estamos de las instituciones más bajas. Ahí está más la violencia. E: Vos pensás que está más o que dura más? R: Que se da más y que dura más también.

causing it, and certainly have great influence on the woman's response to the violence.

In theory, employment, generating income, can contribute to prevent the violence by eliminating the 'economic pressure' and providing women with the means to leave a violent relationship. Beside this obvious positive economic consequence, having a job requiring women to leave the home and interact with other persons had an additional positive consequence: the signs of violence could not be permanently concealed. Four of the victims expressed they 'had to tell' at work what was taking place at home, and in the case of one woman living in a rural area, complying with her job required her to go to the city, where she had access to support. This external support, she said, made a crucial difference in her general perception of the situation.

However, in many situations, economic independency is not immediately achieved by finding a job. Employed women remained economically dependent, and this was to large extent connected to the type of jobs they had access to, enforcing the perception of a gendered labour market. In addition, employment chances are connected to specific class sectors. For instance, victims with low education and no independent trade living in areas with reduced economies, could only count on low qualification jobs in or connected to the public administration. Five victims expressed that in order to get such type of employment, they had to actively 'participate in politics', backing one or another candidate. This political participation, clearly challenging traditional gender roles, provided a sense of purpose and self-development in relation to three victims, yet the activities normally involved in political participation triggered jealousy and other controlling behaviour in their partners. These 'politically assigned' jobs funded by the public administration, although temporary, could provide women with some economic certainty, yet this aspiration to diminishing their economic dependency collided with their personal safety at home.

Moreover, finding a job did not really have immediate preventive and protective consequences. It appears that, according to four victims' testimonies, the prospective of the women starting a job outside the home in contact with other persons, such as schools and the police, triggered violent episodes. These victims recalled violent episodes 'the night before' they had to start a new job, when 'without any reason', their husbands started discussing and beating them. A similar situation could be perceived in relation to pursuing education by three other victims.

These 'retaliation' type of violence, possibly resulting from the prospectives of independence of the victims, may appear during the early employment period.

Another connection between violence and socio-economic class appeared in relation to the personal network of victims and perpetrators, specially in small towns. For instance, four victims expressed that the social connection of the abuser with the police, 'having friends' there, resulted in the refusal to take measures, even when the victims had suffered serious injuries. This 'preferencial treatment' seems to be enforced by three other victims' claims of police brutality against the abusers. In one of this cases, the husband was 'from the countryside' with no social connections, and in the other cases, the police report was made by someone influential in the community. The importance of social connections is illustrated by one of the service providers located in the North:

> La Quiaca was founded by three families, here half to 80% of the people are Mamani or Quispe, I don't know the other common family name. Everybody knows everybody, so this will close doors when you need to take some precautions.[Religious Association 2, North][76]

Similarly, in San Salvador and San Pedro, social contacts were also important for victims in order to get the judicial procedure started. In three cases, victims working as domestic help found support in their employers, who were either lawyers or had connections with public authorities.

Based on the victims' testimonies, housing conditions did not to have a direct influence on the violence. The majority of the victims had at a certain point lived with extended family, either their own or their in laws. These housing arrangements were not exclusive to victims with migrant or rural background. Women expressed that while they were living under these conditions, different types of violence used to take place, and the usual family response was that she had to 'endure' the violence, and that it was 'normal'. Moving out and gaining independence, once considered as a solution by the victims, did not diminished the violence. In some cases, the violence increased, as the result of lack of family protection:

> - Soon after that we got the house. And then I thought, perhaps being alone we can start...

[76]la familiaridad del pueblo, o sea este lado habla del primo, del primo en 3er grado pero La quiaca la fundaron 3 familias, ac la mitad al 80 % de las personas son Mamani, Quispe y no s cul es el otro apellido comn, todo el mundo conoce a todo el mundo. Entonces, eso hace que se cierren un poquitito ms las puertas a la hora de tomar ciertas pertinencias.

- Start over?

- Start over. But it was not like that (she laughs). It was not like that, because the abandonment was worse, and I felt more exposed. [Victim 14, Alto Comedero][77]

This victim considered that living with the husband's family possibly influenced the husband's behaviour, yet the situation continued after moving on their own.

Connections between indigenousness and IPV As commented in the previous section, indigenousness is considered to promote cultural values that endorse traditional gender roles, and these perpetuate and naturalise violence against women. The type of violence where this perception is most evident is sexual violence. Service providers made several references to sexual violence taking place during celebrations, particularly carnival. These references were sometimes made casually and in a matter-of-fact attitude, suggesting these were natural and 'accepted' sexual practices. One of the prosecutors explained:

So there is a belief here that during carnival it is allowed that the man can have extra-marital sexual relations and that is not frowned upon. Women as well, and furthermore, they say 'the carnival children, are the carnival's', because there is so much promiscuity that you don't know whose child is that.[78]

Looking closer, however, sexual consent is not always clear. After describing the sustained alcohol consumption during festivities, I asked one of the social workers if there were reports of sexual abuse following those celebrations. She replied:

- Women do not report because, since both were drinking they have no idea what's going on. What we normally say here is that, for instance, in the carnival season in January, February, then in October, November, nine months later, the hospital is full, these [pregnancies] are the consequence of carnival![...] I don't know if you've heard of 'La rameada'? 'La rameada' means that a man finds a woman and he takes her somewhere and has sex with her. That is 'La Rameada', (in the

[77]Al poco tiempo este nos dieron la casa. Y eso bueno como que me dio a mí pensar, digo, bueno, será que, a lo mejor estando solos podemos comenzar..E: Un nuevo comienzo? R: Un nuevo comienzo. Y bueno, no fue así (risa). No fue así porque eh el abandono fue ms todavía, y yo me sentí más desprotegída.

[78]Entonces acá hay una creencia que durante el carnival se está permitido hasta que el hombre pueda tener relaciones extra matrimoniales y no está mal visto. Y las mujeres también, es más, dicen, 'los hijos del carnival son del carnival', porque hay tanta promiscuidad que no se sabe aveces de quien es el hijo.

bushes), because that doesn't take place in town but on the outskirt, so the man would drag the woman somewhere to have sexual relations'.

- But that is rape, no?

- Well, but no body reports it.

- And does it still happen?

- Yes, it happens, we will see in 9 months several pregnant women, but they take it as normal. [Social Worker 4, North][79]

This lack of reporting in cases of rape is taken as a suggestion that it is accepted or consented to, and as not constituting violence. Yet another explanation is given by one of the Legal Counsellors who had extensive experience in sexual violence cases. She argued:

> The problem is that they don't believe the women. And they don't believe them, because the judiciary requires to resist the use of force. Ok? And to prove that they resisted the attack, when in fact, the majority of women don't resist because they think that they face more risk by doing so. Because in reality, they are selfless, I mean, [violence] seems invincible. They think: ok, stop, let it be quick. [...] I used to think [lack of reporting] was due to shame or embarrassment. But today, I tell you, it's because they don't believe us, because we must prove [resistance].[80]

This statement challenges the 'naturalisation' argument, suggesting that such an evident form of violence affecting women, dragging women out of sight to be raped,

[79]No se hacen las denuncias porque como toman ambos no saben ni lo que pasa. Lo que si nosotros acá en el hospital por lo general decimos, en por ejemplo por la época de carnaval en enero, febrero ya en octubre, noviembre ya a los 9 meses ya tenemos la sala llena, ah esto es consecuencia del carnival[...]. Porque no sé si vos escuchas en la que dicen ahora La Rameada? La Rameada que significa que viene un hombre agarra una mujer y se la lleva a cualquier lado y tiene relaciones. Esa es La Rameada, que antes decían 'la rameaban' porque no se hacía tan al centro, se hacía las orillas entonces decían la rameaba a la mujer, o sea la arrastraba a la mujer hacia un lugar para tener relaciones sexuales. E: Pero eso seria una violacion, digamos. R: Y bueno pero nadie lo denuncia, nadie lo denuncia. E: Y se sigue practicando? R: Y si, porque nosotros vemos que de aca a 9 meses vamos a ver que hay este, varias que estan embarazadas pero no, lo toman como algo natural. Es una característica, una costumbre de aca de la zona, lo toman como algo natural.

[80]El problema es que a las mujeres no se les cree. Y no se les cree, porque se exige, de parte de la justicia, que acredite en haberse resistido, No? Y que prueben haberse resistido al ataque. Y en realidad, la mayoría de las mujeres no se resiste al ataque, porque piensan que resistiéndose, se ponen más en riesgo. Porque en realidad, está la indefensión. O sea, parece que es algo invencible. Porque dicen: Bueno, basta. Y que pase rápido.[...] Porque yo antes lo atribuía a la culpa a la vergüenza. Pero hoy te digo todo eso es parte de esto de que no nos creen, porque tenés que, nos exigen acreditar eso.

is in fact, silenced by procedural aspects for reporting sexual violence. This requirement of proving resistance in order to constitute rape is not a legal requirement, but it seems rather derived from a biased interpretation of how women must behave during a sexual assault.

The same procedural requirements, proving resistance applies to rape within the couple, rendering similar consequences. Sexual violence is considered a form of domestic violence according to victims and service providers alike, yet all judiciary personnel argued that women do not report it. Some explained this lack of reporting as the consequence of shameful feelings, and some saw it as the consequence of women not recognising such as with an imposition, violating their consent but as the entitlement of men over the female bodies. Victims, however, very clearly recognised sexual violence as violence during the interviews. One of them, had reported immediately after the rape had taken place, with no criminal consequences.

Beside the gender bias of the judiciary, additional difficulties are found in the North, suggesting that women in the region are even more vulnerable in cases of sexual violence. Service providers explained that a forensic examination is delayed for days due to lack of a professional to perform this, and sometimes weeks if the woman lives in the extreme rural areas. Without the forensic examination no report will be filed by the prosecutor. But these difficulties are not only present in the North. Police officers in San Pedro explained they had a forensic doctor in the station only Wednesdays and Thursdays, also inconvenient since the majority of cases of domestic violence takes place during the weekends. These practical difficulties are not immediately seen by service providers as causally connected to the lack of report of sexual violence crimes by women, who rather see 'cultural' factors as the main cause. The use of cultural relativism to justify sexual violence in Jujuy was publicly criticised at national level by the Institute of Anti-Discrimination (INADI), but this criticism has still not had concrete consequences on public servants.

Culturalised perspectives are not only limited to sexual violence and indigenousness, as commented in the next segment.

Connections between rurality and IPV References to cultural values perpetuating domestic violence were made by several service providers, and often

connected to the isolation derived from rurality. Again, it is the combination of these two elements, traditional views and rurality, what seems to make an impact on violence. The isolation, lack of education and predominance of certain beliefs appear to contribute to the perpetuation of violence. They are perceived by service providers as the cause of high fertility rates among women in rural areas, often taking it as something 'natural' by some service providers:

> - *Do women have many children, in general?*
> - Yes, well, depends where. In the north, because there is a very primitive culture regarding beliefs, there is no birth control. There are no contraceptives, hospitals are located in some places where people have no access to [...] and those women have the children that god gives them. And with them, they endure violence like something normal and natural, day to day. [Prosecutor 3, San Salvador.][81]

'Having children' appeared as a crucial factor influencing the decision of the woman to stay in the relationship, enduring the violence, rather than venturing a life independently. The economic dependency of the woman is greatly increased by the number of children born, leading her to continue enduring the violence. Yet having children is in itself an imposition, as this social worker explains:

> Until recently, we were working with the issue of contraceptives, because these are big families, ok? and a lot of people from the rural area came here and said: 'no, my husband doesn't want me to take it', but why? why do you want to have more kids if you can't feed them? Why not take it? Well, investigating a bit, we found out that the man doesn't want that because then he can't know if she is cheating on him. If he has no sex with her and she gets pregnant, she's cheating. Also, because of economic dependency. Many women receive family subsidy, but he is the one receiving it, or if she receives it, he is the one using the debit card, and then they get money and spend it on things unrelated to the children.[82]

[81] E: Tienen muchos hijos en general estas mujeres? R: Eh, sí. Lo que pasa es que depende del lugar de donde estemos hablando. En el norte, como hay una cultura bastante primitiva en cuanto a las creencias, entonces, ahí no hay control de la natalidad. No hay medios anticonceptivos, los hospitales están en determinados sectores en donde la gente ni siquiera tiene alcance al hospital. [...] Y esas mujeres tienen los hijos que la vida les da. 10 hijos, 8 hijos. Y con ellos son, sufren la violencia como algo normal y natural, cotidiano.

[82] Hasta hace poco tiempo nosotros trabajábamos con el tema de los anticonceptivos, porque son familias muy numerosas sí? Y mucha gente de la zona rural venia y decía, 'no mi marido no quiere que lo tome,' pero porqué?, porque usted quiere seguir teniendo chicos y no tiene con que darles de comer, por qué no le va a dar?. Y bueno, por ahí entre investigaciones que hacíamos nosotros entre charlas, el marido no quería que tome porque así sabía si le engaaba o no le engañaba la mujer. Si no tenía relaciones este y ella estaba embarazada es que lo estaba engañando con otro. Y la dependencia económica también, o sea muchas mujeres inclusive que

One victim confirmed this interference with the reproductive freedom as part of the controlling behaviour of the man, present across generations:

> That's why I did not know how to protect myself. I mean, if only I would have known how to protect myself, taking pills, there are so many ways, I would not have, that's what I think now, perhaps... My mom tells me 'I never protected my self, I wanted to, but dad said that is to prevent illness, and he was not ill, so', my mom had so many kids, thirteen! because my dad didn't let her use that. [Victim 15, the North][83]

This type of controlling behaviour on the reproductive freedom of the woman, however, was also found in San Pedro, suggesting that it is not only connected to rurality. One of the interviewed victims explained that when her husband found out she was taking contraceptives, he forced her to take them all, ending up in a hospital.

A second aspect connecting rurality and violence appears to be the increased dependency of the woman by the combination of old age and rurality. One of the victims expressed her inner desire to break up with her partner, yet at her age, it was not possible for her to perform a number of basic activities such as chopping wood, carrying water or lifting heavy weights. This problem was aggravated by the emigration of her children, who left in search of employment opportunities.

One final, and important aspect of rurality was the discriminatory treatment connected to it, also commented in the previous section. Respondents, even those not having a rural background, explained that having a rural background is something people carry with them wherever they go, leading to discrimination. Victims explained that because of their rural background, service providers would treat them as ignorants, disregarding their opinions. These claims were supported by several service providers, explaining that women who are perceived as 'countryside' women are more likely to be sent away without any assistance. Three victims also referred to the same discrimination as taking place within the couple. One of them commented:

cobran el salario universal, lo cobra él; no lo cobra ella o si lo cobra ella la tarjeta la maneja él va saca la plata y vienen y que se yo, gastan en cosas que no tienen que gastar y no realmente en los chicos sí?.

[83]Por eso yo no saba qu era cuidarse. Yo digo, ahora yo me habría sabido cuidar, tomar pastillas, hay muchas cosas para cuidar. No habría tenido, digo, así lo pienso ahora, quizás. Siempre tiene miedo, mi mamá me dice: Yo nunca me cuidaba, yo quería cuidarme y me dice el papá, le decía que eso es para ahorrar enfermedad, 'pero yo nunca me enfermo', y entonces mi mamá se llenó de hijos, trece. Porque mi papá dice que nunca le dejaba usar eso.

> I remember my ex-husband used to call me that, 'you 'boorish' woman, you know nothing!' That's how he used to talk to me, and even when he was also from the north! Not like he was, well, a sweet gringo (she laughs). Not at all, he was even more 'morocho' than me! [Victim 8, San Salvador][84]

Based on the testimony of this victim, it appears that the combination of gender and rurality located her in a disadvantaged position compared to her husband, even when in education terms they seemed at similar terms (she was a teacher and he was a police officer) and she seemed 'better situated' in relation to the racial discourse.

Connections between migration and IPV One specific form of controlling behaviour was mentioned several times in relation to migrant women, particularly from Bolivia. Partners would threaten their women with taking away the kids back to Bolivia:

> When the man is from Bolivia and the woman from Argentina, the man exerts pressure on the woman. How does he do that? He threatens to take the kids, or actually takes them. There have been several such cases here, Bolivian dad, he comes here and kidnaps the kids, he takes them away.[Religious association 2, North][85]

One of the victims confirms this type of threats:

> Until he took my child. He took my baby's bag, and he took him. [...] I managed to find my baby, and I took him back. He was there, in Bolivia. I went there to take him back.[Participant, Focus Group 2][86]

Migrant women, in this case mainly Bolivian women, seem to face some additional difficulties. One of the representatives of the religious association providing support to migrants explained how Bolivian women who did not have an Argentinian

[84]Me acuerdo que mi ex-marido me sabia decir eso 'sos una campeña, no sabes nada.' Así me trataba. Y eso que él también es del norte no? No es que él sea, uf, un gringo de dulce leche (risa). Nada que ver, encima es mas morocho que yo!.

[85]Cuando el hombre es boliviano y la mujer es argentina y el hombre ejerce presión sobre la mujer. Qué es lo que hace el hombre? Amenaza siempre con llevarse a los niños, o se los lleva en su defecto, si? Se los lleva porque acá han pasado varios casitos que el papa es boliviano, ha venido, se secuestró a los hijos, se lo ha llevado.

[86]Hasta que se llevó a mi hijo. Este, le ponía se agarró su maleta de mi gordo y de él y se llevó. [...] Sí, lo llegué a encontrar a mi gordo y lo fui a traer. Allí estaba en Bolivia. Y lo fui a traer.

ID could not access free legal representation in cases of domestic violence, even if they were residents in Argentina. Only in cases were the children were direct victims of domestic violence was this possible, and if these children were Argentinian nationals. Similar difficulties arise in relation to public housing. A Bolivian woman residing in Argentina would not be entitled to public housing in the event of breaking up with the abuser and proving dependent children and lack of means, unless she has Argentinian children. This service provider explains:

> Jujuy has the particularity that you cannot get the property of a house on your name if you are not naturalised.[...] For instance, if I am Bolivian and I have 4 Argentinian children, because of them I should get a house, ok? But since I am Bolivian and I did not get the nationality, the provincial government won't give me the house, it is given in theory to the kids. But then what happens? The father reappears and kicks out the woman, kicks out the kids. [Religious Association 2, North][87]

Synthesis of the findings In sum, although there is a general agreement among participants that gender discrimination is a common problem in the province, the general perception indicates that the intensity of the issue is different throughout the province, having the strongest representation in the north, or within some specific sectors of the population, such as indigenous peoples, Bolivian and rural communities. The general belief is that there is no causal link between indigenousness, rurality and nationality and the violence, but they lead to the naturalisation of it. This perception seems to lead to service providers to 'accept' certain violent practices occurring in these contexts, and exclude them from the mandated legal and policy framework, indicating a culturalised justification of the exclusion of certain women from the policies

Nevertheless, there was at the same time a very strong conviction that domestic violence happens in every social segment, regardless of class, race or ethnicity. This apparent contradiction seemed to distinguish between the causes of violence, and the consequences it brings. The claim of 'universal' character of the violence of service providers seemed directed to prevent class stigmatisation, above all.

[87] La provincia de Jujuy que tiene la particularidad que si vos no estas nacionalizado no podes titular una casa a tu nombre. [...] Por ejemplo si yo soy boliviana y tengo 4 niños argentinos por mis hijos deberían darme una casa si? Pero como yo soy boliviana y no me he nacionalizado el gobierno de la provincia de Jujuy no me da la casa, se la da teóricamente a los niños, pero que pasa? después aparece el padre y se queda con todo vota a la mujer vota a los niños.

The visibility of cases of IPV affecting the lower-class was largely explained by the fact that the public sector provides services for persons without sufficient means to afford a the provision of services from the private sector. In practice, there are two different trajectories for victims: one for lower-class and one for upper-class victims and perpetrators. This recognition, consciously done in some service providers, and less so in others, indicates the importance of the public policies for victims of lower socio-economic status, particularly in relation to protection from violence.

In the next section, I discuss the existing policies in Jujuy in light of these findings.

7.3.4 Discussion of the policies on domestic violence in Jujuy from an intersectional perspective

In this section, I discuss wether the connections between the social categories and IPV are addressed in current policies in Jujuy.

Regarding the formal institutional response toward IPV, women have direct access to a number of remedies, yet the police, receiving the women's formal complaint or declaration, has a pivotal role. If a woman decides to address the family judge and request a protection order, she needs to present copy of a declaration taken at the police. Access to free legal representation from the Office of Public Representation also requires a formal complaint at the police. In the realm of criminal law, a formal complaint in combination with a forensic report are notified to the prosecutor who will initiate criminal proceedings if he considers that a crime has been committed. The role of the police thus, becomes essential for accessing civil and criminal protection, yet this seemed to be the first hurdle for victims' access to justice.

References in previous sections suggested that the police seems at times to enforce 'traditional gender roles' considered to cause violence, often resulting in the refusal to take a victims' formal complaint and the consequent paralysis of the system of protection. Victims criticised the response of the police, who in their eyes, did not take violence seriously. This mismatch of expectations and reality was often referred to by police officers as something exceeding the 'gender biased' view of violence:

- I think that the judicial system is not effective in this, and it is not providing a response, support to the woman, a solution to her problem. The police does not work or is not capacitated in this area. We cannot give a solution to a woman who comes here and was beaten, a physical problem with her husband. It's going to be a long procedure through the judiciary in order to take that man out of the home, with an eviction order. It is not immediate, it takes time. [Police 5, Alto Comedero][88]

This quote suggests that there are formal institutional elements preventing the immediate response of the police to potential risky situations. Police officers explained that, without an order of the prosecutor, they can only arrest the abuser for disturbance of the public order due to alcohol abuse in the public sphere, a misdemeanour. This is no longer possible if the man is at home, protected by the private sphere. This shows that the old dichotomy of the public/private divide and its damaging effects for women[89], seems alive and well in Jujuy.

Furthermore, even in cases where the initial 'police' hurdle has been conquered, securing a formal complaint and perhaps an arrest, additional formal institutional limitations seem to emerge in relation to the prosecution of crimes. Based on the testimony of the victims, only one case of attempted murder and arson had criminal consequences, resulting in prison of the offender. Yet prosecution was a clear exception among the interviewed victims. One of the victims, married to a police officer, having endured long years of violence and attempted suicide, recalled the incident that decided her to report the violence:

- He hit me hard, he threw me to the floor, dragged me around, made me bleed. He hit me on the legs a lot, not on the head, on the legs. Then he told me he was going to kill me. He hit me so hard I thought it was the last day [...] but he didn't kill me. Afterwards he told me to take a cold shower, because he says it prevents the bruises. But I was so battered that my legs were completely blue, from toes to waist, and I couldn't walk because, it's horrible to walk like that. I had to support

[88] Yo creo que el sistema judicial aca no es muy efectivo y no da una respuesta, una contencion a la mujer o le da una solucion al problema que tiene ella. La policia no trabaja o no esta capacitada en ese aspecto. Nosotros no podemos darle una solucion a una mujer que viene por un problema que sea golpeada, problema fisico con el marido. Seria si o si un tramite largo, a traves de la justicia para que ese hombre sea sacado de la casa, tenga una exclusion del hogar y salga de la casa. No es inmediato, sino que lleva un proceso.

[89] See, for instance: C. Chinkin. A critique of the public/private dimension. *European Journal of International Law* 10(2):387-395, 1999Chinkin [1999]; A. X. Fellmeth. Feminism and international law: Theory, methodology, and substantive reform. *Human Rights Quarterly* 22(3):658-733, 2000.

my self on the stairs' railings, the walls, the kitchen table, I walked like falling. I couldn't take a step. [...] And 15 days passed and I finally went to report him.

- *Did you still have bruises at that time?*

- Yes, I had a lot, that's why I couldn't walk. I remember I sat down, and then after filing the complaint I could not stand up from the chair. I stood up grabbing the table, like this.

- *Yet the only option you had was to request an eviction order with the family judge?*

- Yes. [Victim 8, San Salvador] [90]

In seven other cases the victims had suffered multiple injuries, causing them bruises and soreness, and in some cases preventing them to walk and work. Two victims were raped, and in two cases, victims were battered with a stick or other implement. In all cases, complaints were filed, yet no criminal measures were adopted. The difficulty for prosecution of these injuries seems to be directly connected to the definition of the crimes. As described in subsection 7.3.1, there are three different level of injuries leading to criminal conviction in the Criminal Code, minor, serious and severe. The type of injuries most interviewed women had suffered fall under the category of 'minor injuries' according to the Criminal Code. Can this classification of injuries capture the position of women suffering domestic violence? If the most common types of injuries found in this case are classified as minor, does it mean that in order to consider IPV as 'serious', violence has to escalate? The current criminal definition of injuries, then, poorly reflect the aims of the international and national documents of sanctioning violence.

Yet, beside the discussion of whether this distinction among injuries sufficiently reflects the gravity of IPV, the type of prosecution connected to them is different. Only serious and severe injuries call for ex-officio prosecution. According to the interviews, the main difficulty of relying on the criminal offence of minor injuries for prosecution is that it requires the formal complaint of the victim, but victims

[90]- Me pegó feo, me tiro al suelo, me arrastro, me saco sangre. Me golpeo mucho las piernas. La cabeza no, las piernas me golpeaba. Y me dijo que me iba a matar. Me pego tan feo que yo sentía que era el último día. [...] Pero, pero no me mato. Después de golpearme me hizo que me bane con agua fría, porque dice el que no te salen los moretones. Pero yo estaba tan tan golpeada que tenia todas moradas las piernas enteras, asi de pies hasta la cintura, y no podia caminar porque no, no.. es horrible caminar asi. Me agarraba de la baranda de la escalera, de las paredes, en la cocina de la mesada, caminaba medio como cayéndome. Porque no poda pisar. [...] Y paso 15 días y le fui denunciar recién [...] -Vos tenias lesiones en este momento? - Si, si tenia un monton, por eso no poda caminar me acuerdo que me sent y no me podia parar de la silla ya después de hacer la denuncia y me paraba así agarrando me de la mesa. - Sin embargo la opción que te quedo fue ir a familia pedir la exclusión de hogar? - Si

may not be interested in promoting the criminal procedure 'because they often economically depend on the husband'. This points to shortcomings in the system. Firstly, a gap in the law, making prosecution of IPV dependent on the formal complaint of the victims. Secondly, lack of awareness regarding IPV victims' often inconsistent behaviour, withdrawing complaints. Finally, lack of training of the personnel to recognise common characteristics of domestic violence, where victims are, by principle, emotionally and material dependent on the abusive partner as a result of the partner's controlling behaviour, turning a formal complaint in a very high demand.

Nevertheless, if victims can 'afford' to make a formal complaint, if the police is collaborative to that end, if a forensic report is secured and a prosecutor is willing to start prosecution, new complications emerge. One of the prosecutors point to the difficulties arising in relation to evidentiary requirements:

> Sometimes people report and then that ends in nothing because of lack of evidence. One must remember that family violence takes place at home, in small circles where perhaps there are no witnesses, then it is hard to prove the crime, very hard. Today we are implementing new evidence rules to carry on these cases and prosecute these people, such as psychiatric and psychologic tests, because sometimes, without witnesses, beyond the physical injuries, we don't know if these were inflicted by this man. In order to connect the fact, if we look at the definition of the crime, it is an illegal and guilty behaviour that can be attributed to the accused. We have that illegal and guilty behaviour, we can have a medical report, but how do we attribute that behaviour to this man? Often we don't have enough proof. [Prosecutor 3][91]

So, again, the public/private divide is perceived in the law, emphasising the presence of witnesses of violence rather than physical and psychological evidence and

[91]Por ahí la gente denuncia en la comisaría y esas denuncias caen al vacio porque no hay pruebas. No nos olvidemos que la violencia familiar se ejerce dentro de la vivienda, dentro de circulos muy pequenos donde quizas no hay testigos, entonces es muy difícil probar el delito, es muy difícil. Hoy estamos implementando otras pruebas para poder llevar adelante estas causas y llevar a juicio esta gente, que son pericias psiquiatricas, pericias psicologicas. Porque normalmente no encontramos testigos, mas alla de las lesiones que le pueden producir en el cuerpo, este, nosotros tampoco tenemos constancia de que estas lesiones hayan sido producidas por este hombre. Nosotros para vincular un hecho, si vamos nosotros al concepto del delito, hay una acción tipicamente anti jurídica y culpable que puede ser atribuida al autor. Nosotros tenemos toda una conducta antijuridica y culpable, se puede apreciar un informe médico, pero como atribuimos esta acción, este hecho, a este sujeto? Muchas veces no tenemos las pruebas necesarias.

other proof of the coercive pattern of the violence. Similarly ill-suitable evidentiary requirements were mentioned in relation to sexual violence by one of the legal counsellors in the previous section, and confirmed by Prosecutor 3 when I asked him if women reported sexual violence within the couple:

> - No, no, no, no, sexual violence no. They, yes, maybe they sometimes, some persons have reported that the man comes home, beats her or insults her and then, because he's drunk he also starts with jealousy, that 'I'm sure you have a boyfriend somewhere', and ends up, I don't mean abusing her, but imposing a sexual relation at that time perhaps unwanted by her.
>
> - *And this is not abuse?*
>
> - Yes, it is abuse, definitely. Because, yes, the relation must be consensual. The moment she says no...but the thing is that she doesn't even have the time or the opportunity to express whether she wants or not. So we don't know if it is consented...obviously it is not consented. [Prosecutor 3][92]

Proving lack of consent appears then as a basic procedural aspect preventing criminalisation of sexual abuse, particularly in the context of domestic violence where 'lack of witnesses' make evidentiary matters worse. These evidentiary requirements indicate the incompatibility of the criminal response with a gender sensitive understanding of violence.

In cases of minor injuries, sexual abuse or family violence, where the prosecutor considers that a case will not succeed in Court for evidentiary reasons or because it does not reach the threshold of a crime, he may refer the case to victim-offender mediation.[93] In general, there seems to be a positive view of mediation among the interviewed judiciary service providers. One of the prosecutors describes mediation

[92]No, no no no no, sexual no. Ellas, si, quizás, ellas, en algunas oportunidades, algunas personas han denunciado que el hombre llega borracho a la casa, le pega o la insulta y después, por una cuestión que como esta tomado también ejerce una cuestión de que como tiene celos, de que seguramente vos tenés un novio fuera de la casa este termina, no digo abusándola, pero imponiendolé una relación sexual en ese momento quizás no querida por ella. - Esto no es abuso? - Si, es abuso, definitivamente porque si, la relación sexual tiene que ser consentida. En el momento en que ella dice no. Lo que pasa es que ni siquiera tiene el momento o la oportunidad para expresarse si quiere o no. Por eso no sabemos si es consentida obviamente no es consentida.

[93]Code of Criminal Procedure of Jujuy, arts. 106 - 111. National law 24.417 had incorporated mediation as a procedure where 'therapeutic and educational programmes' could be ordered by the judge after injunction orders have been issued, thus, pointing to counselling and with a clear preventive goal. This was translated into provincial legislation in different ways, although often resembling conciliation and settlement mechanisms, largely criticised in the literature.(See: Bottomley, What is happening to family law? A feminist critique of conciliation, Women In Law 162, J. Brophy & C. Smart Eds. 1985; Shaffer, Divorce Mediation a: Feminist Perspective 4,6 U. Toronto Fac. L. Rev. 162 (1988).) Mediation was later prohibited in cases of domestic violence by 26.485, arts. 9 (e) and 28.

as a better alternative than the old 'conciliation' approach, where victims and offenders were expected to negotiate an agreement in the presence of the judge and the prosecutor, without any legal counsel. Victims can currently request the participation of the Office of Victim Support (OFAVI), in addition to the defence. Nevertheless, he recognised some limitations of this type of remedy:

> In cases of IPV, the Code of Procedure does not allow a conciliation or a mediation because it is very difficult. We can reach a conciliation or a mediation for, for instance, material harm, because these are material issues. Or to freeze assets for larceny or a minor injury, there may be economic reparation. [...] Reaching a similar agreement is very difficult in cases of violence, because it is difficult to monitor compliance. [...] They can compromise to treat each other well, have no problems, but it is difficult to monitor if they will comply with it. [Prosecutor 1, North][94]

This reference reveals that mediation can hardly be considered as providing protection from violence, since no monitoring is imposed. In fact, the measures that can be adopted in such mechanism are only related to reparation. This is an important limitation of the system, since in Jujuy, mediation is allowed for crimes with a sentence of up to 6 years of prison and used as an alternative to the criminal procedure. Moreover, regardless of the prohibition to use mediation in cases of domestic violence, in practice, injuries commonly derived from cases of domestic violence are referred to this mechanism, rendering no protection measures for the woman, who must personally request them in an separate procedure in civil court.

Protection deriving from the criminal system is severely restricted, thus, as the result of the design of the applicable laws and policies. In principle, these gaps can be expected to present the same limitations for any victim of IPV, regardless of class, race and other categories of difference. However, initial differences can be found. Firstly, the procedural aspect, requiring the victim to initiate the criminal proceeding, can be expected to results in the unequal access to justice of victims of IPV, particularly those from lower social sectors, since in addition to emotional dependency, their economic dependency is emphasised due to the

[94]En los casos de violencia, el código no permite llegar a una conciliación y a una mediación, por el hecho de que es muy difícil. Uno puede llegar a una conciliación o una mediación en una cuestión, por ejemplo, por danos. Porque eso son cuestiones materiales, o para ver una retención de un individuo cuando hay un hurto o una lesión leve. Puede llegar a repararse económicamente. [...] Ahora, llegar a un arreglo así similar en casos de violencia es muy difícil de comprobar que se cumplen. [...] Es muy difícil que apruebe. Porque si se pueden comprometer a que se van a tratar bien, a que no haya problemas, pero es complicado comprobar que se vaya a cumplir.

structural economic pressure in lower socio-economic classes, refraining them from making a formal complaint in the absence of additional economic support. Secondly, the previous section has highlighted that difficulties increase in rural areas and the periphery of cities due to limited availability of forensic specialists or medical doctors, imposing a practical limitation in pursuing a criminal claim.

The civil procedure, where protection measures for cases of family violence are possible, seems to have several difficulties on its own: differential access and the general lack of monitoring of the issued protection measures. Access to the civil procedure was experienced differently by women located in the capital of the province, where family tribunals are based, and those living in the periphery, particularly in rural areas. In general terms, although legal representation is not required, it seems particularly needed for victims with low education or those who cannot request the protection orders in person. Possibly, the most positive experience regarding the procedure for receiving a protection order was the following:

> - *Did you go to the family court alone?*
> - I went there with all my papers. My sister told me 'you need this', so she gave them to me one day I came by, by surprise she gave me everything and that same day I went for a residence certificate, birth certificate, and the next day I went to tribunals with all my papers.
> - *And how did they treat you at Court?*
> - They told me 'this is what we have to do, home eviction, protection order', they told me, 'you can do this', it was so fast. [Victim 6, San Salvador][95]

This testimony corresponds to a teacher residing in the city, whose sister providing advice was a doctor in one of the biggest hospitals. Her socio-economic status, particularly her place of residence, education level and social contacts, seem to have helped her in starting the process to get a protection order. The importance of location is perhaps better captured by this example of a similarly educated woman (college drop-out), also with social support, yet residing a rural area:

> - December was the worst, he ran me over with a motorbike on the street, he beat me.

[95]- Fuiste vos a familia? - Fui yo con todos mis papelitos, mi hermana me dijo necesitas esto, fue asi me los dio cuando yo cai, de sorpresa me dio todos y en ese mismo momento fui a hacer constancia de residencia, constancia de nacimiento, y al otro dia estaba en el juzgado con todos mis papelitos. - Y cómo te trataron en el juzgado? - Me dijeron esto es lo que corresponde hacer, exclusion de hogar y protección de persona, me enseno usted puede hacer, esto fue todo tan rápido.

- And the police?

- They told me, 'you know what lady? Look for a lawyer, get a trial. We can't do anything else. We put him two, three days under arrest, he comes out and things get worse'. And well, the social worker helped me. He made an assessment report and we went to the Public Represenative. She was still not convinced that things were final. She said: 'no, they will get back together, they all do', the Public Representative [...] And well, the social worker helped me, he said: 'no, I know her, she's been suffering since long.

- So it was through his intervention?

- Yes, he put a stop to it. He helped me a lot, made that report, I went to Jujuy, and in Jujuy, they put a stop to it. [Victim 14, North] [96]

The dependency of victims on public institutions, particularly the Public Representation in order to initiate the civil procedure and request protection orders, is increased in rural areas and other places from the civil courts, due to their centralised location. The lack of timely institutional response resulted in the case of this woman, in an unwanted pregnancy due to rape by the abuser, increasing her already dependent situation, and consequently, her vulnerability to violence. The direct consequence of not being in 'the centrality' of Jujuy' seems to be the lack of protection from violence.

The lack of enforcement of civil protection orders has been emphasised by several service providers, including police officers and prosecutors. This policy gap reveals the important 'side effect' of criminalisation: beyond the retributive effect of imposing a criminal sentence, it provides protection for women keeping the man in custody or activating the system monitoring the execution of criminal sentences. This is highlighted by one social worker:

The family court, what does it give you? A home eviction or protection order? A protection order provides you with two weeks of protection at most, and what can they tell you? they get the police officer back, 'I don't have personnel to send another'. And then the man comes back and hurts the woman twice as hard because

[96]- En diciembre ha sido lo peor. Me paso en la calle una moto enorme que el tiene por encima. Me golpeo. - Y la policía? - Me decian 'Sabe que, dona? agárrese un abogado vaya por el juicio. Nosotros ya no podemos hacer más. Lo tenemos dos, tres dias preso, el sale y hace peor las cosas.' Y bueno, en eso me ayudo el asistente social. Hizo un informe, fuimos a la defensora pública. La defensora aun para entonces no se convencía ella que la situación no iba así. Ella decía: 'No, ellos van a volver. Todas las parejas son así,' la defensora oficial. [...] Y bueno el trabajador social dijo: No, yo a ella ya la conozco. Ella viene sufriendo hace mucho. - O sea fue por intermedio de él? - Si. Se puso un alto gracias a él. Porque el me ayudó mucho. Me hizo un informe. Baje a Jujuy. Eh En Jujuy le pusieron un alto.

> of all the frustration of not being able to come to the house and not seeing her in two weeks. The judge says: 'you cannot get near her', but there is no sanction, do you see? There is no criminal sanction. So the guy has to hit the crap out of her or kill her so that it goes to the criminal process. Here, everything is Family law. [Social worker 4, Alto Comedero][97]

Furthermore, meeting the victims' expectation of enforcement of protection and eviction orders becomes even more difficult when the abusers have a substance addiction or other disability problems, due to the lack of institutions where these men can be received and provided appropriate treatment, as explained by prosecutors and public representatives alike. Yet, the most determining barrier seems to be the impossibility to impose a treatment, be that a psychological, addiction or perpetrators' treatment.

In addition to these general gaps in protection, there is another limitation of the civil law system resulting from the combination of the gender/class-blind interpretation of substantive norms regulating child neglect. As commented in the previous section, reporting the father's lack of compliance with alimony agreements may result in a counter claim of child neglect due to working obligations of mothers, endangering their custody rights over the children. This negative consequence of legally reporting the father's 'abandonment' of the children affects women of lower socio-economic class in particular, who cannot 'afford' child care or working less hours. The fear of the husband, seems replaced by the fear of losing the children to the husband.

There is one crucial aspect that has a direct effect in the protection of women and highlights once more the importance of the criminal system. Alternatives to punitive measures seem in practice concentrated in San Salvador. The interviewed victims, particular those located in the centrality of Jujuy, seemed generally satisfied with the provision of services. They can access directly four types of specialised or semi-specialised centres beside the centres for primary health care. Firstly, the Centres for the Support of Family Violence, located in all major hospitals and the majority of public health centres. Secondly, the Centres for the Support of

[97]El tribunal de familia, Que te da? Una exclusión del hogar o una protección de persona? Protección de persona que a lo sumo dura dos semanas y que te pueden decir, reten te lo retira el oficial: No tengo personal para mandar otro. Y el tipo vuelve y te hace doblemente de goma a la mujer porque, por toda la impotencia de no poder entrar en la casa y no haberla visto en dos semanas. El juez dice: Usted no se puede acercar. Pero no hay sanción. Me entendés? No hay una sanción penal. O sea, el tipo la puede la tiene que reventar a la mujer o matar a la mujer para que vaya via judicial. Por allí todo esto es civil.

Childhood, Adolescence And Family, depending of the Ministry of Social Welfare. Finally, the Division of Gender Equality and Equal Opportunities depending on the Municipality, provides specialised services victims of IPV. Similarly, the Office of Victim Support provides legal and psychological support, in addition to mediation. Conversely, for many victims residing in other areas, particularly those in rural areas, the police station is the only resource they have near by, and around the clock.

In sum, the lack of practical enforcement of protection orders creates a general gap in protection, shifting the protective role to the field of criminal law. However, criminal law shows substantial and procedural limitations for capturing the complexity of domestic violence. Moreover, these limitations are strengthened by the deficient response of the public institutions due to a number of different factors, such as lack of resources, insufficient capacity building, but also due to gender-bias.

These gaps in protection, potentially affecting all women, indicated special consequences for women belonging to low socio-economic class. The intersection of gender and class has a particularly disempowering effect, mainly in relation to protection, by discouraging women from pursuing criminal sanctions, referring them to mediation and preventing them from reporting the violation of agreements. Furthermore, the centralised provision of services, including civil protection, exacerbates the dependency of victims located in the periphery on public institutions, particularly the criminal system.

7.4 Chapter Conclusions

The aim of this case study was to explore whether the application of an intersectional approach, in this case inspired by dynamic-centred studies, could reveal gaps in prevention and protection policies on VAW, and this has been accomplished. The intersection of gender and class was found to create concrete challenges. It showed that although access may be formally available for all women, the institutional response is not only very limited for cases of IPV in general, but it has specific gaps for women who find them selves at those intersections. The most important gap found in the system in Jujuy related the ineffectiveness of the current system of protection orders and the scarce possibilities of criminalisation of the violence, particularly sexual violence, leading to lack of protection.

The relevance of the intersection of gender and class in relation to IPV was perceived by very few service providers. Rather, the influence of socio-economic aspects and consequences of violence were considered as independent factors. There seemed to be a general concern among most service providers about stigmatising the lower socio-economic class by suggesting that there was a causal relationship with IPV, justifying their over representation in the provision of public services as the result of lack of alternative means.

However, as this case has shown, the application of an intersectional lens can contribute to explore class and identified hidden elements and connections with other categories. The racialisation of class, silenced in most interviews, emerged as a very visible intersection, traversed by indigenousness, nationality and rurality, categories that were commonly mentioned by the participants. There was little to no recognition of these interconnections, leading to an important negative consequence: a culturalised and often stigmatising view of indigenousness, migration and rurality. Therefore, by recognising the relevance of class and the connection between these categories, the application of an intersectional lens may result in the de-stigmatisation of rural, migrants and indigenous groups.

In addition, intersectionality helped in revealing that international migration was not considered as a category of discrimination in itself, perhaps due to the proximity to the national border, as suggested by Benencia[98], yet regardless of the absence of an ethnical conflict, migrant status can limit the access to resources and services, particularly in relation to access to justice. Internal migration, on the other hand, seemed connected to rurality and low socio-economic status, and leading to particular family configurations, different from those of international migration.

Finally, the notion of centrality-periphery, not only geographically but socially determined, showed that the difficulty to access protection is more acutely perceived in the periphery than in the centrality. Thus, beside rural women, suburban women and women of lower social sectors within urban areas are likely to be more vulnerable to the violence.

These findings emphasise the usefulness of deploying an intersectional approach to analysis of violence against women. Would the adoption of such approach challenge domestic legal principles? The adoption of an intersectional approach to IPV in

[98]Benencia [2007].

Jujuy is formally possible since national and provincial policies aim at addressing gender and class inequality by the adoption of positive temporary measures. In addition, Argentina does not preclude the collection of statistical data reflecting race, ethnicity, indigenous origin and national origin. The major difficulties in implementing such an approach could relate to limited resources and the need for capacity building. The adoption of policies designed to cover the gaps discovered by the applications of an intersectionality lens can be costly, thus consideration to what 'type' of intersectional analysis is more effective should be given.

Regarding the dynamic-centred approach deployed in this chapter in comparison the group-centred approach from the previous one, some differences can be noticed. In this dynamic-centred approach, the level of analysis seems more superficial, probably derived from the multiple categories that had to be explore, and the random selection of victims participating. Since victims were not approached as representatives of any group, they were more willing to focus on the violence rather than in categories of discrimination. Also, since there is no predetermined 'marginal group', it seems possible to gather a hint of the victims through the testimony of service providers who seem to echo victims' claims, since we do not know who the silenced victims are. Thus, although the dynamic centred is useful to identify intersections, the second step, conducting a group-centred approach seems needed in order to find the group's 'voice'.

Part IV

Final Part

Chapter 8

Conclusion

> The greatest thing in this world is not so much where we stand as in what direction we are moving.
>
> J. W. von Goethe

8.1 Introduction: Recalling the research questions and the proposed theoretical framework

The incorporation of intersectionality within the human rights framework on Violence Against Women (VAW) implies the recognition of the diversity of women and their different experience of violence, challenging essentialist views of gender. In addition to the strong symbolic meaning that such recognition would carry, strong presumptions regarding its theoretical and practical potential to ensure women's full the enjoyment of their human rights emerged. Establishing if this is a credible expectation or not should inform the decision on whether or how to include intersectionality into the international human rights framework on VAW. This study has undertaken precisely that task.

The incorporation of complex concepts such as intersectionality into a body of norms, calls for careful examination, since the theoretical and practical richness

of the concept can be restricted in such a normative translation. Furthermore, an unclear norm can affect future State compliance. Considering the ongoing process of incorporation of intersectionality within the international human rights framework on VAW, a theoretical, normative and empirical analysis provides useful information at the right time.

The overarching question of this thesis, 'what are potential benefits and limitations of incorporating intersectionality into the human rights framework on violence against women?', was addressed by analysing how intersectionality was positioned within those norms, what State obligations were derived from that positioning and by the empirical application of an intersectional approach to cases of VAW in order to reveal whether by doing so, gaps in legislation and policies could be revealed.

The first step of the study was to define the human rights framework on VAW. The configuration of the framework, described in chapter 1, adopted an ethical approach to human rights, inspired by Sen[1], arguing that ethical demands can be equally translated into legal norms, creating binding obligations on States, and norms which, although not legally binding, are nevertheless compelling. The adopted approach also favoured the participation of non-State actors in the process of elaboration of norms, as suggested by the Spiral Model of Change, in the belief that involving multiple actors can contribute to enhance the compliance with human rights.[2] As a consequence, the normative framework on VAW proposed in this thesis includes hard and soft law documents that can be considered today to constitute the core normative body of VAW. Proposing such a construction of the normative framework calls for a progressive reading of article 38 (1) of the Statute of the International Court of Justice (ICJ), expanding from only treaties and conventions to include other consensual documents, such as declarations and General Assembly resolutions. The prevalence of consensual sources over other sources of international law also included in article 38, such as customary law and general principles of law, challenges earlier perspectives held by some authors who emphasised the usefulness of customary law or general principles of law in the absence of international treaties or conventions on VAW.

[1]A. Sen, Elements of a theory of human rights, (2004) *Philosophy and Public Affairs* 32(4):315- 356; Human rights and the limits of the law, (2006) *Cardozo Law Review* 27(6):2913-2927.

[2]See: *The Persistent Power of Human Rights, from commitment to compliance*, Risse, Ropp and Sikkink (eds) (Cambridge University Press, 2013).

The second step was to define intersectionality, elaborated in chapter 2. Intersectionality is considered as an explicit interdisciplinary approach to the study of race, gender, class and other social categories of distinction, specifically applied to the interpretation of human rights norms in this thesis. The main notions underlying intersectionality were identified. The overarching notion holds that individuals (and groups) are affected by multiple forms of subordination. It also highlights the structural (social and institutional) construction of systems of oppression and emphasises that subordination affecting individuals or groups is based on social categories of distinction. Finally, intersectionality suggests that multiple categories of distinction do not simply add to each other to create a multiplied effect, but that a new and different situation of subordination is created.

Two techniques were suggested to identify implicit and explicit references of intersectionality in norms. The first technique, 'applied intersectionality', was inspired by Satterthwaite and Crooms.[3] It consisted of identifying within the human rights documents on VAW all references similar to the core theoretical notions of intersectionality and all keywords indicating multiple inequalities and social categories. Then, a contrasting analysis between keywords and principles was conducted in order to discover possible inconsistencies. The second technique, 'formal intersectionality', focused on explicit references to intersectionality in human rights documents.

Explicit and implicit references to intersectionality indicated the level of penetration of the notion within the norms, resulting in some cases in formal recognition and in other cases, resembling an intersectional approach by the direct application of the underlying principles, without formal recognition. Inspired by Strid, Walby and Armstrong, references were analysed in relation to three aspects: inclusion of selected keywords (recognition), coherence with the underlying principles, and derived recommendations for States (outcome).[4]

In addition, two main strands were identified within intersectionality literature. The group-centred approach, focusing on marginal groups, and the dynamic-centred approach, focusing on more than one group in order to be able to compare

[3]M. Satterthwaite, Crossing borders, claiming rights: using human rights law to empower women migrant workers', (2005) *Yale Human Rights and Development Law Journal* 8; L. Crooms, Indivisible Rights and Intersectional Identities or, What Do Womens Human Rights Have To Do With The Race Convention?, (1997) *Howard Law Journal* 40: 619-640.

[4]S. Strid, S. Walby, and J. Armstrong. Intersectionality and multiple inequalities: Visibility in british policy on violence against women. Social Politics 20:4 (2013).

them and explore the relations between different categories and dimensions. Each of these approaches was applied to the two empirical case studies conducted in this thesis.

In the sections below a recapitulation of the results of the normative and empirical analysis of this thesis, answering each research subquestion, is provided, followed by an overall conclusion, addressing the overarching research question of this thesis. Next, the theoretical implications are presented, followed by some final thoughts.

8.2 Normative and Empirical Findings

The main findings are chapter specific and were summarised within the respective normative (3 and 4) and empirical (6 and 7) chapters. The sections below will synthesise those findings to answer the overarching research question and sub-questions. In doing so, the results of the study will be related to the conceptual framework upon which the study was based.

8.2.1 The position of intersectionality in the norms and the derived obligations

This section addresses the first and second sub-question of this research:

a) How is intersectionality currently positioned within the international human rights framework on violence against women and,
b) What are the derived duties of States?

The analysis of the human rights norms on violence against women in this thesis rendered different results at the international and regional level.

Regarding the position of intersectionality within the human rights framework on VAW, chapter 3 has shown that if one looks at the United Nations norms as a comprehensive whole, it is possible to argue that intersectionality has emerged, in different forms, alongside the first norms explicitly addressing VAW within human rights law. These normative milestones took place in periods of time that coincided with important developments in the social sciences in relation to intersectionality,

particularly in feminist theories, as discussed in chapter 2. The emergence of intersectionality that started in the late 1980s and early 1990s is noticeable in the work of the Committee monitoring the implementation of the CEDAW and the final documents of International Conferences, while intersectionality's 'coming of age' period is visible in UN documents from 2006 onwards with the aid of the United Nations Secretary General (UN SG) and the UN SRVAW. These findings support the appropriateness of the theoretical framework used in this thesis, adopting a normative framework that captures the importance of the interaction with civil society, and as such, inclusive of soft-law norms.

The process of incorporation of intersectionality at the UN level seemed to consist of three main stages. In the first place, documents mention specific groups of women, i.e. rural women, grounds of vulnerability, i.e., age, and factors increasing the vulnerability of women, i.e., migration and poverty, connecting them to specific forms of violence, i.e., sexual exploitation. The next stage shows attention to 'multiple discrimination', sometimes highlighting concrete grounds of discrimination. These two stages, revealed by implicit references to the underlying principles of intersectionality, correspond to the 'applied intersectionality' technique. Thirdly, 'formal intersectionality' revealed explicit references to intersectionality as an *approach* to be deployed in the interpretation of human rights norms on VAW.

Nevertheless, when looking at the UN documents individually, the process of the introduction of intersectionality shows some drawbacks and inconsistencies. As expected, human rights documents adopted at an early stage, such as the Declaration on the Elimination of Violence against Women (DEVAW) and the Declarations and Plans of Action of International Conferences, only showed notions of 'vulnerability', yet two years later, the Beijing Conference made reference to the 'multiple barriers' that prevent some women from access to justice, moving to the second stage of the process.

The most evident incorporation of applied and formal intersectionality at the UN level so far, is done by the CEDAW Committee, although the clear recognition of intersectionality found in the norms is not necessarily replicated in the views on individual communications on VAW. Yet, the few concrete cases where the Committee has deployed a seemingly intersectional approach may derive from the manner that individual claims are presented. It is possible that the crystallisation

of intersectionality in the norm has not yet reached notoriety among practitioners, and once it does, individual communications might rely on it more often. Hence, this might show a lack of articulation between general recommendations and individual communications that may be overcome in the future, rather than a substantial lack of consistency. However, *Kell vs. Canada*, where the Committee found a violation to the right of housing as a result of the combination of indigenousness and the condition of victims of domestic violence that would have gone unnoticed otherwise, shows that the Committee can expand the type of violation claimed and incorporate an intersectional analysis to the case, suggesting that the way an individual communication is framed is only relatively important, and it is the will of the body and the expertise and awareness of the Committee members that matter most.

The process toward the incorporation of intersectionality becomes much more irregular when looking at the resolutions of the United Nations General Assembly (UN GA). Resolutions on different forms of VAW are passed regularly, yet references to vulnerability and multiple discrimination fluctuate, showing the closest references to an intersectional approach in resolutions addressing VAW in general and resolutions dealing with trafficking in particular. Furthermore, the duties of States, and more precisely, the language used, often varies from session to session. These inconsistencies are not surprising considering the dynamics of the process of adopting resolutions, being adopted by State representatives often briefly deployed to that body, and who may not have any expertise on the topic. In order to pass informed and consistent resolutions, the UN GA often relies on the special reports of the UN SG and the UN SRVAW, like those analysed in chapter 3. Both mandates have referred to intersectionality as a 'approach' to VAW, in addition to recognising intersectional discrimination and specific grounds of vulnerability. This could indicate that a more comprehensive and consistent body of UN GA resolutions on VAW with references to intersectionality could be expected, as long as the work of the UN SG and the UN SRVAW remains consistent and coherent.

The obligations derived from the positioning of intersectionality as 'applied' or 'formal' intersectionality vary. Applied intersectionality results in a 'unpacked' intersectional approach, that legislators, policy makers and judges can directly apply. When specific grounds of vulnerability or factors of vulnerability are connected to a certain type of violence, a concrete measure is often recommended.

Similarly, when a specific intersectional situation is highlighted, a tailored measure is recommended. For instance, General Recommendation (GR) 19 points to specific intersections, such as gender, age, rurality and migration, having consequences in relation to sexual exploitation, particularly in the context of domestic work. As a result, it recommends the monitoring of their employment conditions. In these cases, obligations are only exceptionally open-ended, calling on States to take such 'special vulnerability' into account and elaborate policies.

However, references to 'multiple discrimination' and 'intersectional discrimination' trigger norms that have a partially pre-determined obligation and a partially undetermined obligation that needs to be 'defined' in concrete cases. For instance, GR 25 established that State Parties 'may need to take specific temporary special measures to eliminate multiple forms of discrimination against women and its compounded negative impact in them', leaving the type of measures to the discretion of the State party.

In addition, the idea that certain intersections influence specific forms of violence or create specific situations, is applied as a lens in concrete cases. For instance, the CEDAW Committee has analysed the effectiveness of the remedies in connection to the intersection of gender and migrant status of the victim, and her inability to speak the language in *Jallow v. Bulgaria*. This idea of intersectionality as a tool for the interpretation is enforced by GR 28, presenting intersectionality as a basic concept for understanding the scope of obligations.

The role of intersectionality as an interpretative tool suggests that intersectionality is similar to the principle of due diligence in two aspects. On the one hand, intersectionality is more about what measures are to be implemented and why, rather than a detailed list of obligations. On the other hand, it indicates that the 'intersectionality-based' interpretation will determined not only the obligation, but also the breach of the obligation, triggering the responsibility of the State. Intersectionality, then, is to be applied by the policy maker implementing the law, and also by the judge, who has to interpret whether the obligation was fulfilled. However, no approach or even steps are recommended by the Committee in order to interpret obligations from an intersectionality perspective.

A different picture emerges when regional human rights systems are examined. As analysed in chapter 4, the process of emergence of intersectionality observed at the international level is not mirrored by the Council of Europe (CoE) and

the Inter-American system. As expected, both regional human rights conventions, the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the American Convention on Human Rights (ACHR), adopted prior to the emergence of intersectionality, show a clear 'equality' stance and none or scarce reference to vulnerability. The documents adopted after 1990s, although making a few references that would imply a first stage intersectionality approach, do not always resemble the underlying principles described in chapter 2. There are however differences between the two systems.

The CoE's approach to VAW has been mostly developed in the jurisprudence of the European Court of Human Rights (ECtHR), since documents specifically addressing VAW have been adopted only recently. In adjudicating cases on VAW, the ECtHR applies the ECHR, and in doing so, the principle of indirect discrimination is sometimes deployed. Yet, based on the analysis of case law on domestic violence, VAW is not always in and by itself considered as a form of gender discrimination. Consequently, no references to 'multiple discrimination' were found, and only occasionally the Court has referred to 'vulnerability', although connected to physical vulnerability rather than structural systems of oppression, as intersectionality suggest. The case law of the ECtHR analysed resembles, thus, a first stage applied intersectionality approach to VAW, at best. The approach of the Court is unlikely to change, since compliance with the documents addressing VAW, Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe (Rec(2002)5) and the Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), cannot be assessed by the Court regarding individual complaints.

Rec(2002)5 and the Istanbul Convention establishes the duties of States regarding VAW, yet none of them adopts a clear intersectional perspective. On the one hand, although Rec(2002)5 refers to 'multiple discrimination', the view is very limited, covering the intersection of gender and origin only, and relating to 'customary practices'. In fact, references to 'physical' vulnerability in the document seem more flexible and less culturally biased than this 'multiple discrimination' approach. On the other hand, the Istanbul Convention, adopted a year later than CEDAW GR 28 and with intersectionality squarely established in gender studies, adopts the same equality paradigm as the ECHR, with some additional references to vulnerability, yet no references to 'multiple', 'intersectional' discrimination or intersectionality. However, the Convention is unprecedented in the level of detail

in relation to State obligations, recommendations and promising practices. The CoE, thus, offers a counter alternative to the 'intersectionality trend' found in CEDAW: an exhaustive and detailed list of obligations, rather than relying on guiding principles like intersectionality and due diligence. Further comparative research on the benefits and limitations of having an exhaustive list of obligations or a more open-ended approach, could improve the human rights framework for VAW.

The Inter-American system seems to have been more in line with the process of emergence of intersectionality at the UN level. Adopted at the early stages of elaboration of intersectionality, the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Belem do Para Convention) introduced the notion of vulnerability, referring to physical vulnerability and to some extent to vulnerability resulting from structural conditions, reflecting a first stage applied intersectionality approach. The Court has applied these principles in its jurisprudence, particularly in the cases relating to rape of indigenous women, analysed in chapter 4. The Court has taken one step further by including the notion of 'multiple discrimination' in its decisions. Nevertheless, the apparent process followed by the norms and the Court is not mirrored by the Commission in cases of domestic violence. Instead, the Commission has combined the notion of structural vulnerability with the notion of 'risk assessment', resulting in a non-structural approach. Would the understanding of the Commission prevail over the Court's, the intersectional approach would suffer a set back.

There is lack of coherence between the international and the regional systems in relation to 'formal intersectionality'. This may be derived from the configuration of the human rights framework on VAW, since this is not a body of neatly articulated norms, but a cluster of multiple bodies of norms found at different levels, with no predetermined connection or hierarchy among them and only sporadic cross reference between institutions. The complex dynamic of this normative framework is thus emphasised by the examination of intersectionality.

Nevertheless, looking at UN and regional human rights norms on VAW, it appears that an 'applied intersectionality' approach, first by making references to 'special groups', then to 'vulnerability' and recently, to 'multiple discrimination', has been steadily entering the framework. These notions have become part of the core of the framework, introducing diversity into a once homogeneous view of gender. 'Intersectionality' as an approach to inequality, although responsible for revealing such

diversity, remains at the margins of the norms. This indicates that so far, ready made and predetermined recommendations in relation to intersectional situations are preferred over open-ended recommendations that call for the exploration of the intersectional situation and the design of tailor-made policies.

The question arises as to whether 'applied intersectionality' sufficiently covers situations of violence or if policies still contain gaps in relation to special intersectional situations. An intuitive answer would be that applied intersectionality references found in the norms at the international and regional level are often overlooked by domestic policies, as shown in the empirical case studies conducted in this thesis. In fact, references to vulnerability were not even formally included in the norms. The omission may be derived from the characteristics of the framework, where connection between domestic, regional and international systems seems at times to be sporadic, rather than the difficulties of implementation of the norms. This finding can inform the choice of the level where a norm introducing intersectionality could be adopted.

Does the lack of compliance with 'applied intersectionality' suggest that there is a need to incorporate 'formal intersectionality' into the human rights framework on VAW? What would be the potentials and limitations of bringing intersectionality as an 'approach' to VAW to the centrality of the norms? These questions call for the empirical examination of the potentials and limitations of the approach in order to reveal gaps in legislation and policies on violence against women.

8.2.2 Prevention and protection policies examined through an intersectional approach to VAW

The empirical cases in this thesis addressed the following question:

> Can the application of an intersectional approach to VAW contribute to reveal gaps in legislation and policies, and if so how?

In order to answer this question, two case studies focusing on IPV were performed, targeting the CoE and the Inter-American system, and adopting the group-centred approach in one case, and a dynamic-centred approach in the other. In both cases, the application of an intersectional approach helped to highlight gaps in norms and policies that *prima facie* were in full compliance with regional and UN

requirements. In both cases, laws and policies on IPV were examined through the lens of gender, race and class. Both cases revealed severe gaps in protection against violence, consequently making reparation completely inaccessible and also implying limitations to prevention policies.

The first empirical case study, examined in chapter 6, adopted a group-centred approach and focused on Romani women victims of IPV in Granada, Spain. The approach adopted by Spanish norms and policies was one of equality between Roma and non-Roma, and men and women, and a gendered understanding of IPV. It could then be expected that a comprehensive reading of the existing Spanish normative and policy framework regarding Roma and IPV would provide similar protection as adopting an intersectional approach. Yet, deploying an intersectional lens in this case showed that the combination of the equality paradigm established in the Spanish Constitution and the positive measures on IPV focusing on gender alone did not warrant Romani women's access to justice, and this resulted in a lack of protection and provision of services. In addition, using an intersectionality lens highlighted the limitations derived from the understanding of the social category of gender as it is embodied in the national law, covering only violence within the couple and excluding violence committed by family members, and the shortcomings in protection policies derived from this understanding. Furthermore, territorial segregation did not only result in social marginalisation, but it had important ramifications in relation to protection, rendering eviction and protection orders useless.

The intersectional location of Romani women victims of IPV was untouched by the norms and policies addressing IPV and those focusing on Roma. An applied intersectionality approach, although expected, was not implemented, and without it, Romani women were in fact left at the margins of the laws and policies on VAW. The detrimental consequences of these gaps in protection call for immediate action, particularly so since these gaps are not met by non-governmental organisations either.

Regarding the formal possibility to incorporate an intersectional approach to the Spanish legal and policy framework, although some formal limitations seemed to exist, such as the impossibility to register race and ethnical belonging as a consequence of the constitutional principle of equality before the law, in practice, some services providers showed awareness of the multiple structural elements affecting Romani women by means of the notion of 'challenges'. They highlighted that

Romani victims of IPV face multiple 'intersecting' challenges, such as IPV and social exclusion. This understanding could be taken as an early expression of the intersectionality approach, a sort of 'proto-intersectionality'.

The second empirical case study, discussed in chapter 7, adopted a dynamic-centred approach and focused on women victims of IPV in Jujuy, Argentina. The selection of the place of research was inspired by the desire to explore other categories besides gender, race and class, since the analysis of international norms had indicated migrant status, rurality and indigenousness as factors contributing to the vulnerability of women. The normative and policy framework in force in Jujuy pays partial attention to gender and no attention to other additional social categories. Although national legislation has also echoed CEDAW in several aspects, strengthening a gendered perspective, in practice, these developments have a very limited impact on policies in Jujuy. This case study, similarly to the previous one, highlighted gender and class as the most relevant categories in cases of IPV, yet it also showed the racialisation of class. The exploration of the relation between categories made class resurface in its full social dimension, incorporating race, indigenousness and migration.

The results in this case showed important gaps in the general institutional response, resulting in the lack of protection of women, particularly in relation to sexual violence. It showed the ineffectiveness of the system of civil protection orders, strengthening the harmful consequences of the reticence toward criminalising IPV found in the judicial system. These limitations derived from the design of the laws, inadequate to respond to gender-based violence, affecting all women. Yet in practice, access to justice was particularly difficult for specific groups of women of low socio-economic class. In addition, the centralised provision of services, including civil protection, exacerbated the dependency of victims located in the periphery on public institutions, particularly the criminal system. The lack of alternative protection mechanisms for women in the periphery of Jujuy turns the police into the most accessible source of protection. Bestowing the police with tools to respond to that situation, such as resources, functional capacity and gender-sensitive capacity training is crucial for providing protection.

In addition to finding gaps in the laws and policies, the application of an intersectional approach to the study of IPV in both cases showed additional advantages. In both cases, the exploration of social categories, particularly race, ethnicity and indigenousness, emphasised their nuanced nature and the interconnections among

them, suggesting that the adoption of a similar view by legislation and policies, and also by service providers, could contribute to challenge socially rooted beliefs and prevent stigmatisation. In both cases, violence was at times embedded in a discourse of naturalisation and culture. Lack of reporting of IPV among Roma and of sexual violence against indigenous women in Jujuy was often considered by service providers as an indication that those types of violence were considered 'natural' within their culture. These culturally biased interpretations of violence had negative consequences on the protection of women, preventing investigation and criminalisation, and accepting the lack of access to services of women belong to those groups as a voluntary decision, rather than a flaw in the system.

Furthermore, the application of an intersectional lens contributes to 'map' inequality. In both cases, territorial arrangements showed concrete social configurations, also resulting in a lack of protection. In the case of Romani women, the influence of the territory on the effectiveness of protection orders became evident, as was the influence of the territory on the socio-economic aspects affecting Roma regardless of IPV. The second case study showed that besides the lack of access that rural women experience, suburban women and urban women belonging to lower social sectors are likely to be left out of protection for the same reason, 'lack of access', confirming that exclusion is a socio-geographical notion. There is a 'centrality', where access to protection policies is much more direct, and a 'periphery', where access to services is mediated by multiple factors, some geographical and some socially constructed.

8.3 Overall conclusion: Potential benefits and limitations of including intersectionality in the HR-VAW

The main benefit of adopting an intersectional approach to the empirical analysis of VAW lies in the capacity to reveal the margins, the areas where policies do not reach. Yet, is spelling out concrete intersections and connecting them to specific measures preferable to recommending 'intersectionality' as an interpretative tool? In order to answer this, one must ask the following question: are those margins stable? They appear to be constantly in the making, influenced by local realities, global trends, economic fluctuations, technological changes, and a number of

other factors. For this reason, 'formal intersectionality', as an approach to the analysis of VAW and the discovery of appropriate policies, seems to be advantageous compared to 'applied intersectionality', in which the margins and the needed policies are pre-determined. Including intersectionality as an approach to VAW into the norm would bring flexibility to capture changing social realities, with the possibility of tailor-made norms.

Introducing a flexible notion, such as recommending the adoption of an intersectionality approach to VAW within human rights norms, seems in line with the spirit of human rights law and its 'living nature', seeking to accommodate new understandings and evolving situations. This incorporation could be done by means of a hard and/or a soft norm. Regardless of the preferred form, if applied correctly, the application of an intersectional approach could enhance prevention and protection of women from violence by enforcing evidence-based policy making.

Nevertheless, what can be positive from a social point of view may be negative from the legal point of view and vice-versa. For instance, while applied intersectionality results in a sort of obligations 'check list', formal intersectionality would fall between a principle of interpretation and an obligation of means, requiring States to perform the analysis of the intersectional situation, adopt all relevant policies, implement monitoring systems and justify their decisions. From the legal point of view, this is indeed possible since principles of interpretation and obligations of means are two already existing notions in international law, yet in practical terms, traditional clear cut obligations tend to be favoured because they are easier to be interpreted by both the policy maker and the judge, with higher chances of compliance.

The possible resistance to incorporate yet another 'interpretation' element to the normative framework due to the additional work it would require, could be prevented by providing guidance or at least, establishing basic steps to be followed. Yet, there are competing views about how 'intersectionality' is to be methodologically deployed, so establishing those 'first steps' could become difficult. For instance, this thesis applied a group-centred and a dynamic-centred approach. In doing so, several differences and similarities could be empirically identified. Yet, each approach serves a specific purpose, hence choosing one over the other would also depend of the purpose of the policy.

Even after establishing a common ground regarding how to transpose the approach into practice, another aspect needs to be taken into account: the norm is to be interpreted by different people for different purposes. The application of an intersectional approach by the policy maker, aiming at implementing the norm at the domestic level, will differ from the application of the judge, who will assess whether the State has complied with the norm or not. In both cases, compliance with the norm will require a legal and a social scientific analysis.

These practical limitations are connected to the inherent capacity, or incapacity, of the law in becoming a sustainable tool for social change. This is particularly the case for hard law, where concepts tend to become crystallised, unable to adapt to changing situations. This is why the ethical approach to human rights adopted in the theoretical framework of this thesis has emphasised the importance of soft law for VAW. It makes possible, for instance, to incorporate temporary provisions allowing for modifications following scientific and technological developments. Thus, in addition to a hard norm recommending intersectionality, adopting a protocol guiding the implementation of intersectionality that can be modified regularly, for example, is possible under this ethical approach to human rights. The non-legally binding nature of the document can be compensated by the application of the principle of good faith, as suggested in the theoretical framework, in addition to the principle of due diligence.

The combination of hard law and soft law norms in the process of incorporating intersectionality to the human rights framework on VAW could achieve the much needed harmonising effect between international and regional norms through the adoption of a hard law norm recommending formal intersectionality, with the flexibility of a soft law norm guiding the implementation of the approach. In addition to providing 'guidelines' for the application of the intersectional approach to VAW, a soft norm could partially compensate the practical difficulties of implementing such a 'demanding' hard law norm by engaging multiple actors in the elaboration of the norm, who could not only enhance its legitimacy, as Sen suggests, but ensure State compliance with such norm due to their vigilant attitude, as suggested by the Spiral Model.

8.4 Theoretical contributions

Based on the normative findings of this thesis, an improvement of the 'analytical techniques' proposed in chapter 2 is now possible, defining the level of coherence between the references found in the human rights documents on VAW and the underlying principles of intersectionality. The lowest level of coherence between the norms and intersectionality corresponds to the notion of 'vulnerable groups' because such reference does not necessarily suggest that the vulnerability is socially (and institutionally) constructed. That 'vulnerable' condition may be derived from illness, for instance, or other 'individual' factors. The second level of coherence between norms and intersectionality points to 'vulnerable grounds' or 'factors of vulnerability', suggesting a structural (social and institutional) construction of vulnerability. References to 'multiple discrimination' seem to emphasise the structural understanding of oppression in addition to the combination of grounds, reaching a higher level of coherence with intersectionality. Explicit references to 'intersectionality' as an approach to be deployed imply full coherence with intersectionality principles. This 'analytical lens' can be applied for the analysis of laws and policies, and further improved based on future research.

The application of the suggested 'analytical lens' is a direct challenge to suggestions that the notion of 'vulnerable groups', as emerging in the case law of the European Court of Human Rights (ECtHR), carries a social-contextual analysis of discrimination. As commented in chapter 3, although the Court suggests that vulnerability has social consequences, the idea that the vulnerability is 'socially produced' is presented very limitedly. A more intersectional interpretation of the ECHR would contribute to capture the social nature of VAW and establish the connection between violence and discrimination, moving towards more consistent case law.

In addition, the empirical results of this thesis showed that, contrary to Crooms' and Satterthwaite's expectations, a holistic interpretation of the laws and policies applicable at the domestic level did not provide protection to the women located at intersections of inequality, nor did the 'applied intersectionality' interpretation of norms achieve that result. Furthermore, the lack of domestic implementation of implicit references to intersectionality existing in international and regional human rights documents point to the lack of compliance with the norms, even when monitoring mechanisms are in place. This suggests that besides a holistic interpretation

of existing domestic documents, an explicit and perhaps harder international norm calling for 'intersectional' protection seems needed if implementation is expected.

8.5 Final Thoughts

Beyond the partial incorporation by means of references to 'vulnerable groups' or 'multiple discrimination', incorporating intersectionality as an approach to violence against women within the human rights framework would contribute to achieving its central aims, making it possible to incorporate women in their full diversity and reaching out to those at the margins. While there are no real legal limitations to include intersectionality within the human rights framework on VAW, there are a number of potential practical limitations. Some of these, however, are not inherent to intersectionality but derive from the restrictive possibilities of the law as a tool for change, and the multi-level configuration of the framework. Yet, adopting soft law mechanisms and engaging non-State actors could nevertheless make such incorporation possible, bringing intersectionality, once and for all, out of the margins and into the centre of the human rights framework on VAW.

Part V

Appendices

Appendix A

International Legal Documents and Cases

Table A.1: General Recommendations

Document	Body
CEDAW General Recommendation No.12: Violence against women, 1989.	UN Committee on the Elimination of Discrimination Against Women (CEDAW)
CEDAW General Recommendation No.14: Female Circumcision, 1990, A/45/38 and Corrigendum.	UN CEDAW Committee
CEDAW General Recommendation No. 24: Article 12 of the Convention (Women and Health), 1999, A/54/38/Rev.1, chap. I.	UN CEDAW Committee
General Recommendation No 19: Violence against Women, adopted at the Eleventh Session, 1992,A/47/38.	UN CEDAW Committee
CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994.	UN CEDAW Committee
CEDAW, General recommendation No. 25, on article 4, paragraph 1, of the CEDAW, on temporary special measures, 2004.	UN CEDAW Committee

CEDAW General recommendation No. 26 on women migrant workers, 5 December 2008, CEDAW/C/2009/WP.1/R.	UN CEDAW Committee
CEDAW General recommendation No. 27 on older women and protection of their human rights, 16 December 2010, CEDAW/C/GC/27.	UN CEDAW Committee
CEDAW General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women, 16 December 2010,CEDAW/C/GC/28.	UN CEDAW Committee
CEDAW General recommendation 29, on article 16 of the CEDAW: consequences of marriage, family relations and their dissolution, 26 February 2013.	UN CEDAW Committee
CEDAW General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, 1 November 2013, CEDAW/C/GC/30.	UN CEDAW Committee
CERD General Recommendation XXV Concerning Gender related dimensions of racial discrimination, 20 March 2000, A/55/18	UN Committee on the Elimination of Racial Discrimination (CERD)
CERD General Recommendation XXX on Discrimination Against Non Citizens, 1 October 2002.	UN Committee on the Elimination of Racial Discrimination (CERD)
CESCR General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant), 12 May 1999, E/C.12/1999/5.	UN Committee on Economic, Social and Cultural Rights (CESCR)
CESCR General Comment No. 13: The Right to Education (Art. 13 of the Covenant), 8 December 1999, E/C.12/1999/10.	UN Committee on Economic, Social and Cultural Rights (CESCR)
CESCR General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12 of the Covenant), 11 August 2000, E/C.12/2000/4.	UN Committee on Economic, Social and Cultural Rights (CESCR)

CESCR General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights (Art. 3 of the Covenant), 11 August 2005, E/C.12/2005/4.	UN Committee on Economic, Social and Cultural Rights (CESCR)
General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13.	UN Human Rights Committee (HRC)
CRC General comment no. 5 (2003), General measures of implementation of the Convention on the Rights of the Child, 27 November 2003,CRC/GC/2003/5	UN Committee on the Rights of the Child (CRC)
Recommendation Rec(2002)5 of the Committee of Ministers to Member States on the protection of women against violence, 30 April 2002.	Council of Europe

Table A.2: Declarations

Document	**Body**
Universal Declaration of Human Rights, 10 December 1948, 217 A (III).	UN General Assembly
American Declaration of the Rights and Duties of Man, 2 May 1948.	Inter-American Commission on Human Rights (IACHR)
Declaration of Mexico on the Equality of Women and Their Contribution to Development and Peace, adopted at the World Conference of the International Women's Year, Mexico City, Mexico. 19 June-2 July 1975, E/-CONF.66/34.	United Nations
Vienna Declaration and Programme of Action, 12 July 1993, A/CONF.157/23.	UN General Assembly

Declaration on the Elimination of Violence against Women, 20 December 1993,A/RES/48/104.	UN General Assembly
Beijing Declaration and Platform of Action, adopted at the Fourth World Conference on Women, 27 October 1995.	United Nations

TABLE A.3: Treaties

Document	**Body**
Charter of the United Nations, 24 October 1945, 1 UNTS XVI.	United Nations
Statute of the International Court of Justice, 18 April 1946.	International Court of Justice
European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5.	Council of Europe
International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.	UN General Assembly
International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3.	UN General Assembly
American Convention on Human Rights ('Pact of San Jose'), Costa Rica, 22 November 1969.	Organization of American States (OAS)
Vienna Convention on the Law of Treaties, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331.	United Nations
Convention on the Elimination of All Forms of Discrimination Against Women, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13.	UN General Assembly

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 18 December 1990,A/RES/45/158.	UN General Assembly
Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ('Convention of Belem do Para'), 9 June 1994.	Organization of American States (OAS)
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 6 October 1999, United Nations, Treaty Series, vol. 2131, p. 83.	UN General Assembly
United Nations Convention against Transnational Organized Crime: resolution, adopted by the General Assembly, 8 January 2001, A/RES/55/25.	UN General Assembly
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, 15 November 2001.	UN General Assembly
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.	African Union
Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011.	Council of Europe

Table A.4: UN Reports

Document	**Body**

Report of the Special Rapporteur on Violence against Women, its Causes and Consequences, Yakin Ertürk: addendum: 15 years of the United Nations SR on violence against women, its causes and consequences (1994-2009): a critical review, 27 May 2009, A/HRC/11/6/Add.5	UN Special Rapporteur on Violence against Women, its Causes and Consequences
In-depth study on all forms of violence against women: report of the Secretary-General, 6 July 2006,A/61/122/Add.1	UN General Assembly

Table A.5: Cases

Case	**Court**
Factory at Chorzow (Germ. v. Pol.), 1928 P.C.I.J. (ser. A) No. 17 (Sept. 13), 29.	Permanent Court of International Justice
The Lotus case. S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).	International Court of Justice
North Sea Continental Shelf Cases (Federal Republic of Germany v. Denmark; Federal Republic of Germany v. Netherlands), I.C.J. Reports 1969, p.3.	International Court of Justice
Nuclear Tests Case (Australia v. France), International Court of Justice (ICJ), 20 December 1974.	International Court of Justice
Case Concerning Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v. United States of America); Merits, International Court of Justice (ICJ), 27 June 1986.	International Court of Justice
Bosnia And Herzegovina v. Yugoslavia (Genocide Case), Merits, Judgment of 26 February 2007.	International Court of Justice
Velasquez Rodriguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988).	Inter-American Court of Human Rights

Miguel Castro-Castro Prison v. Peru Judgment of 25 November, 2006. Series C No. 160 (Merits, Reparations and Costs).	Inter-American Court of Human Rights
Inter-American Court of Human Rights (IACtHR), Case of Gonzlez et al. ('Cotton Field') v. Mexico, Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs).	Inter-American Court of Human Rights
'Las Dos Erres' Massacre v. Guatemala, Judgment of November 24, 2009 (Preliminary Objection, Merits, Reparations, and Costs).	Inter-American Court of Human Rights
Cantú et al. v. Mexico, Judgment of August 31, 2010 (Preliminary Objections, Merits, Reparations and Costs).	Inter-American Court of Human Rights
Fernández Ortega et al. v. Mexico, Judgment of August 30, 2010 (Preliminary Objections, Merits, Reparations, and Costs).	Inter-American Court of Human Rights
Contreras et al. v. El Salvador, Judgment of August 31, 2011.	Inter-American Court of Human Rights
R'io Negro Massacres v. Guatemala, Judgment of September 4, 2012 (Preliminary objection, merits, reparations and costs).	Inter-American Court of Human Rights
Maria da Penha v. Brazil, Case 12.051, Report No. 54/01, OEA/Ser.L/V/II.111 Doc. 20 rev. at 704 (2000).	Inter-American Commission of Human Rights
Jessica Lenahan (Gonzales) et al. United States, Report No. 80/11, Case 12.626, Merits, July 21, 2011.	Inter-American Commission of Human Rights
Engel and Others v. the Netherlands (nos. 5100/71, 5101/71, 5102/71, 5354/72 and 5370/72).	European Court of Human Rights
Tyrer v United Kingdom, Merits, App No 5856/72, A/26, IHRL 17 (ECHR 1978), [1978] ECHR 2, (1980) 2 EHRR 1, 25th April 1978.	European Court of Human Rights
Bozano v. France, 18 December 1986, 54 and 60, Series A no. 111.	European Court of Human Rights

Costello-Roberts v. the United Kingdom, 25 March 1993, 30, Series A no. 247-C.	European Court of Human Rights
L.C.B. v. the United Kingdom, judgment of 9 June 1998, Reports of Judgments and Decisions 1998-III.	European Court of Human Rights
Osman v. United Kingdom (23452/94) [1998] (28 October 1998).	European Court of Human Rights
Thlimmenos v. Greece [GC] (no. 34369/97), 6 April 2000.	European Court of Human Rights
Salman v. Turkey [GC], (no. 21986/93), ECHR 2000-VII.	European Court of Human Rights
Anguelova v. Bulgaria, (no. 38361/97), ECHR 2002-IV.	European Court of Human Rights
Fretté v. France (no. 36515/97), 26 February 2002.	European Court of Human Rights
Zilli and Bonardo v. Italy (dec.), no. 40143/98, 18 April 2002.	European Court of Human Rights
ECtHR, Sommerfeld v. Germany [GC] (no. 31871/96), 8 July 2003.	European Court of Human Rights
Aktas v. Turkey, (no. 24351/94), ECHR 2003-V.	European Court of Human Rights
Nachova and Others v. Bulgaria [GC], (nos. 43577/98 and 43579/98), ECHR 2005- VII.	European Court of Human Rights
Hoogendijk v. The Netherlands (no. 58641/00) 6 January 2005.	European Court of Human Rights
Zarb Adami v. Malta (no. 17209/02), 20 June 2006.	European Court of Human Rights
D.H. and Others v. the Czech Republic [GC] (no. 57325/00), 13 november 2007.	European Court of Human Rights
Petrov v. Bulgaria (no. 15197/02), 22 May 2008.	European Court of Human Rights
Danilenkov and Others v. Russia (no. 67336/01), 30 July 2009 (trade union).	European Court of Human Rights
Weller v. Hungary (no. 44399/05), 31 March 2009.	European Court of Human Rights

Carson and Others v. UK [GC] (no. 42184/05), 16 March 2010.	European Court of Human Rights
Alajos Kiss v. Hungary App. No. 38832/06, 20 May 2010.	European Court of Human Rights
Kontrová v. Slovakia, application no. 7510/04, 31 May 2007.	European Court of Human Rights
Bevacqua and S. v. Bulgaria, application no. 71127/01, 12 June 2008.	European Court of Human Rights
Branko Tomasic and Others v. Croatia, application no. 46598/06, 15 January 2009.	European Court of Human Rights
Opuz v. Turkey, Application no. 33401/02, 9 June 2009	European Court of Human Rights
ES. And Others v. Slovakia, application no. 8227/04, 15 September 2009.	European Court of Human Rights
A. v. Croatia, application no. 55164/08, 14 October 2010.	European Court of Human Rights
Hajduova v. Slovakia, application no. 2660/03, 30 November 2010.	European Court of Human Rights
Valiulienė v. Lithuania, Application no. 33234/07, 26 of March 2013.	European Court of Human Rights
Eremia v. The Republic of Moldova, application no. 3564/11, 28 May 2013.	European Court of Human Rights

Table A.6: Individual Communications

Case	**Body**
Communication No. 2/2003, A. T. against Hungary, January 2005.	UN CEDAW Committee
Communication No. 5/2005, Sahide Goekce v. Austria, August 2007, CEDAW/C/39/D/5/2005.	UN CEDAW Committee
Communication No. 6/2005, Fatma Yildirim v. Austria, October 2007, CEDAW/C/39/D/6/2005.	UN CEDAW Committee

Communication 19/2008, Cecilia Kell v. Canada, February 2012, CEDAW/C/51/D/19/2008.	UN CEDAW Committee
Communication No. 20/2008, V.K. v. Bulgaria, 25 July 2011, CEDAW/C/49/D/20/2008.	UN CEDAW Committee
Karen Tayag Vertido v The Philippines, August 2010, CEDAW/C/46/D/18/2008.	UN CEDAW Committee
Communication No. 32/2011, Isatou Jallow v. Bulgaria, July 2012, CEDAW/C/52/D/32/2011.	UN CEDAW Committee
V.V.P. v. Bulgaria. CEDAW/C/53/D/31/2011Communication No. 31/2011.	UN CEDAW Committee

Appendix B

Domestic Legislation and Policies on Violence against Women

B.1 Case Study I: Roma women victims of IPV in Granada

Table B.1: Spanish Legislation and Policies

Instruments
Spanish Constitution, articles 14 and 96. Passed by the Cortes Generales in Plenary Meetings of the Congress of Deputies and the Senate held on October 31, 1978. Ratified by the Spanish people in the referendum of December 7, 1978. Sanctioned by His Majesty the King before the Cortes on December 27, 1978.
Spanish Code of Criminal Procedure (Ley de Enjuiciamiento Criminal), article 544 ter. Royal Decree, September 14, 1882.
Organic Law 27/2003 (OL 27/2003) of 31 July 2003 regulating the Protection Orders for victims of domestic violence.
Organic Law 1/2004 (OL 1/2004) of December 28, 2004, on Protection Measures against Gender Based Violence.
Organic Law 3/2007 (OL 3/2007), of 22 March, 2007 on the substantial equality between women and men.

Act 13/2007, 26 November on Comprehensive Preventative and Protective Measures against Gender Based Violence in Andalusia.
Act 12/2007, 26 November on the Promotion of Gender Equality in Andalusia.
Andalusian Strategic Plan for Gender Equality for the period 2010-2013.

B.2 Case Study II: Victims of IPV in Jujuy, Argentina

Table B.2: Argentinian Legislation and Policies

Instruments
Constitution of The Argentine Nation, articles 16; 37; 75 paras 17 and 22. Law N 24.430, Passed in December 15, 1994. Sanctioned in January 3, 1995.
Argentinian Criminal Code, articles 80, 89 -92, 119-120, 149 bis and 183. Law 11.179 (1984).
Law 24.417 on the Protection against Family Violence adopted in 1994 and regulated by Decree 235/96.
Law 26.485 on the Comprehensive Protection to Prevent, Suppress, Sanction and Eradicate Violence Against Women in every ambit where they conduct interpersonal relations, April 1st, 2009.
Provincial Law 5.107 on the Comprehensive Support for Family Violence, adopted on 22 December 1998, implemented and regulated by Decree 2.965/2001, March 5th, 2001.

Appendix C

Interview Protocols

C.1 Case Study I: Roma women victims of IPV in Granada

C.1.1 Interview victims

1. Personal characteristics and self-identification
2. Relationship and experience of violence:
   (a) needs
   (b) public response
3. Perceptions about group specificity
4. Consideration of intersectional differences within legislation and policies on VAW

C.1.2 Interview non-victims

1. Personal characteristics and self-identification
2. Perceptions about relationship and IPV among Roma:
   (a) needs
   (b) public response

3. Perceptions about group specificity
4. Consideration of intersectional differences within legislation and policies on VAW

C.1.3 Interview service providers

1. Role in organisation and contact with victims
2. Diagram: how is the public response to IPV organised today?
3. Experiences with Roma women victims of IPV:
   (a) victims' needs
   (b) public response
4. Perceptions about group specificity
5. Consideration of intersectional differences within legislation and policies on VAW

6. General background.

C.2 Case Study II: women victims of IPV in Jujuy

C.2.1 Interview victims

1. Personal characteristics and self-identification
2. Relationship and experience of violence:
   (a) needs
   (b) public response
3. Perceptions about violence and group specificity
   (a) Confront with Statement A: universality of violence
   (b) Confront with Statement B: intersectionality and violence
4. Recommendations

C.2.2 Service Providers

1. Role in organisation and contact with victims
2. Characteristics of the victims who access the services
3. Diagram: how is the public response to IPV organised today?
4. Experience in relation to victims of IPV accessing the services
5. Perceptions about IPV: identification of factors/categories. Intersection of categories in IPV
   (a) Confront with Statement A: universality of violence
   (b) Confront with Statement B: intersectionality and violence
6. General background.

C.2.3 Focus Groups

1. IPV in the community
2. Perceptions about IPV and minority belonging or disadvantaged positioning
3. Factors/categories to be taken into account in public responses to IPV

Appendix D

Code Books

D.1 Case study I: Romani women victims of IPV in Granada

Table D.1: Code Book: Case study I

Grouping	**Top-level node label**	**Child node label**	**Type**	**Definition**
Category construction	Selfidentification		Predet.	The attribution of certain characteristics or qualities to oneself
	Gender	Gender roles	Predet.	Acts and behaviours considered being socially appropriate for individuals of a specific sex
		Virginity	Predet.	Absence of sexual intercourse
		Age at marriage	Predet.	Age of the woman when she moved in with her partner.
		Childbearing / Motherhood	Predet.	References to having children, motherhood feelings and responsibilities.
		Age at first child	Predet.	Age when the woman had a first child.

		Number of children	Predet.	Number of children under the care of the woman
		Boy preference	Emergent	References to the preference to have boys rather than girls
		Generalization of marriage	Predet.	References to the need or imposition of being in a serious relationship, as contrary to remaining single
		New relationship after break-up	Emergent	References to the possibilities of having a new partner after breaking up with a formal relationship.
	Ethnicity	Culture	Emergent	
		Rituals	Predet.	References to kinship practices. Actions or behaviors regularly and invariably followed bythe group.
		Family bonding	Predet.	References to the closeness of family members and their involvement in different activities.
		Ethnic belonging of spouses	Predet.	References to the Roma or non-Roma belonging to one of the spouses.
		Cousins-relation	Predet.	References to marriages among cousins.
		Forms of establishing the marriage	Predet.	Process by which the couple was socially recognised as such.
		Bethrothal	Emergent	Formal relationship prior to acquiring the formal recognition as established couple (marriage, de facto union), normally characterised by parents approval.

	Inter-cultural interaction	Emergent	Social interaction between Roma and non-Roma
	Life attitude	Emergent	References to the manner in which the person faces certain events in life, specially in relation to hardship and other difficulties.
	Roma stereotypes	Emergent	Common beliefs about Roma that the participant does not share.
Socio-economic class	Income-generating activities	Predet.	All activities that lead to an income. This can relate to a job, even if it is irregular and sporadic, or self-employment.
	Education	Predet.	The process of receiving systematic instruction at any level, especially at a school or similar institution.
	Illiteracy	Emergent	References to the inability to read or write.
	Housing	Predet.	References to the living accommodation.
	Jail	Emergent	References to the stay in prison
	Neighbourhood	Emergent	References to Almanjayar or the Northern district
Health	Disability	Emergent	References to a physical or mental condition that limits a person's movements, senses, or activities.
	Drugs use	Emergent	References to illegal drug consumption.
Language		Emergent	References to spoken communication and use of words.

	Migration		Emergent	References to movement of persons from one country or province to another, permanently or temporarily.
	Religion		Emergent	
Intersectionality -Related	Intersectionality		Predet.	References to intersecting inequalities, implicitly or explicitly.
	Equality-Homogeneity		Predet.	References to the absence of differences among groups.
	Group-specific		Predet.	References to specific characteristics of the groups as creating a difference in relation to non-Roma.
	Vulnerability		Predet.	References to the possibility of being harmed due to a specific characteristic.
	Discrimination-disadvantage		Predet.	References to unfavorable circumstance or condition based on a social category that reduces the chances of success or effectiveness.
Policies	Prevention	Access to information	Emergent	Availability of information regarding resources, remedies and services for IPV.
	Protection	Reporting	Emergent	The formal complaint for the violence to the police or similar authority.
		Separation	Emergent	Break-up with the partner, even if temporarily.

Violence	Controlling behaviour		Predet.	Acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
	Exploitation		Emergent	Forcing the woman to do something against her will for the benefit of others.
	Coercion		Emergent	Persuading the woman to do something by using force or threats.
	Sexual Harassment		Emergent	Unwanted sexual advances or obscene remarks, usually taking place in the place of employment or education.
	Support		Emergent	References to the provision of assistance, economic or of any kind.
	Weapons		Emergent	References to the possession or use of an implement used for inflicting bodily harm or physical damage.

D.2 Case study II: Women victims of IPV in Jujuy

Table D.2: Code Book: Case study II

Grouping	**Top-level node label**	**Child node label**	**Type**	**Definition**
Category construction	Gender	Gender roles	Predet.	Acts and behaviours considered being socially appropriate for individuals of a specific sex.
		Number of children	Predet.	Number of children under the care of the woman.
		Virginity	Predet.	Absence of sexual intercourse.
		Public participation	Predet.	References to political practice, stakeholder engagement and/or popular participation.
		Marriageability	Predet.	The quality of being eligible for marriage.
		Upbringing of boys	Emergent	References to special care in the upbringing of boys, calling for specific qualities in the carer.
		Fatherhood	Emergent	References to specific tasks for men in relation to the upbringing of children.
	Migration	Internal migration	Emergent	References to movement of persons within the country or province.
		Origin	Predet.	References to the place where the person comes from originally.

	Settlement	Predet.	References to the type of place where people have established their community.
Physical appearance		Emergent	References to the observable characteristics of an individual, including clothing.
Race-ethnicity-indigenous		Predet.	Notions of common origin and destiny; body representations; religious codes, cultural codes, color, blackness, etc.
Rurality	Population	Predet.	References to population density.
	Isolation	Predet.	Proximity to a metropolitan area.
	Economy	Predet.	Main economic activity.
	Services	Predet.	Availability of services for victims of IPV.
Socio-Economic class	Education	Predet.	The process of receiving systematic instruction at any level, especially at a school or similar institution.
	Income-generating activities	Predet.	References to activities that lead to an income. This can relate to a job, even if it is irregular and sporadic, or self-employment.
	Housing	Predet.	References to the living accommodation.
	Child employment	Emergent	References to regular work performed under the age of 18.
	Economic pressure	Emergent	References to material hardship cause by multiple reasons.
Self-identification		Predet.	The attribution of certain characteristics or qualities to oneself

	National Border		Predet.	References to the proximity of the national border with Bolivia and the consequences associated to it.
Intersectionality-related	Discrimination-disadvantage		Predet.	References to unfavourable circumstance or condition based on a social category that reduces the chances of success or effectiveness.
	Equality-homogeneity		Predet.	References to the absence of differences among groups.
	Intersectionality		Predet.	References to intersecting inequalities, implicitly or explicitly.
	Vulnerability		Predet.	References to the possibility of being harmed due to a specific characteristic.
Policies	Prevention	Male support group	Emergent	A voluntary formal therapy group for men, not necessarily focused on violence and not necessarily conducted by professional psychologists. (Religious, social, etc.).
	Protection	Reporting	Emergent	The formal complaint for the violence to the police or similar authority.
		Self-defense	Emergent	The act of defending one's person when physically attacked.

Violence	Controlling behaviour		Predet.	Acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
	Family history of violence		Emergent	References to violence taking place within the family.
	Family response to violence		Emergent	Reaction of the family when victim disclosed the violence.
	Forms of violence	Abandonment	Emergent	References to feelings of loss (emotional or material) following the separation with the man.
		Dating violence	Emergent	Intimate partner violence taking place in a relationship without cohabitation.
		Exploitation	Emergent	Forcing the woman to do something against her will for the benefit of others.
		Infidelity	Emergent	Sentimental or sexual relationship outside the official couple.
		Reproductive freedom	Emergent	Liberty to decide the number and spacing of the children and to use contraceptives.
		Sexual Violence	Emergent	Any act or conduct causing sexual harm or violating the sexual integrity of the woman.

		Stalking	Emergent	Wilful and repeated following, watching and/or harassing of another person.
		Threats	Emergent	A statement of an intention to inflict pain, injury, damage, or other hostile action on the woman or a third person.
		Coercion	Emergent	Persuading the woman to do something by using force or threats.
	Disclosure		Emergent	References to the revelation of the violence by the victim to a person other than a police officer or similar.
	Justification of violence		Emergent	References to violence as the normal consequence of an act or conduct.
	Naturalization of violence		Emergent	Violence is an accepted, although not necessarily justified, daily occurrence.
	Universality of violence		Predet.	The notion that violence can affect any woman, across all classes, cultures, races, religions, etc.
	Use of weapons		Emergent	References to the possession or use of an implement used for inflicting bodily harm or physical damage.

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